

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3514 OF 2022**

1. Prakash Mahadeo Doijad,
Age : 65 years, Occupation: Service,
R/at: Dwara Market Yard, Kolhapur.
2. Rajesh Padmakar Sardal,
Age: 53 years, Occupation: Service,
R/at: 43, Koregaonkar Housing Society,
15th Lane, Rajarampuri, Shalaja Karnik Path,
Kolhapur, Dist.-Kolhapur.

.....Petitioners/
Orig. Accd. Nos. 3 & 4

Vs.

1. The State of Maharashtra,
(Through Vishram Bag Police Station,
Sangli).
2. Satyajit Shivajirao Naik,
Age: 45 years, Occupation: Business,
R/at: Parvati Banglow Vishwas Housing
Society, Near Garpir Darga,
Opp. Dr. Avinash Patil Hospital,
Taluka & District-Sangli.

....Respondents

WITH**CRIMINAL WRIT PETITION NO. 3515 OF 2022**

1. Uttam Bhairu Patil,
Age: 61 years, Occupation: Service,
R/at: Hariprasad Nagar, Budhgaon,
Tal.-Miraj, Dist.-Sangli.
2. Prasad Prabhakar Balgurgi,
Age: 31 years, Occupation: Valuator,
R/at: Ananpurna Bunglow, Nishant Colony,
Dakshin Shivaji Nagar,
Taluka & District-Sangli.

.... Petitioners/
Orig. Accd. Nos. 1 & 2

Vs.

1. State of Maharashtra,
(Through Vishram Bag Police Station,
Sangli).
2. Satyajit Shivajirao Naik,
Age: 45 years, Occupation: Business,
R/at: Parvati Bungalow, Vishwas Housing
Society, Near Garpir Dargah,
Opp. Dr. Avinash Patil Hospital,
Taluka & District-Sangli.

.... Respondents

Mr. S. B. Shetye a/w Mr. Akshay Pansare & Mr. Nipun Sawane for the
Petitioners.

Mr. Vinod Chate, A.P.P for Respondent No. 1-State in WP/3514/2022.

Mr. A. I. Satpute, A.P.P for Respondent No. 1-State in WP/3515/2022.

**CORAM: A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**

RESERVED ON: 28th JUNE 2024

PRONOUNCED ON: 3rd JULY 2024

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) The Petitioners in both the Petitions seek to quash and set aside criminal proceedings of Regular Criminal Case No. 428 of 2022 pending before the Chief Judicial Magistrate, Sangli, arising out of C. R. No. 158 of 2022 registered against them with the Vishram Bag Police Station, Sangli dated 29th April 2022 for the offense punishable under Section 448 read with 34 of the Indian Penal Code, 1860 ("I.P.C.").

2) The Petitioners in Writ Petition No. 3514 of 2022 are the General Manager and the Chief Executive Officer of Shri Warana Sahakari Bank Limited ("the Bank") respectively. The Petitioners in Writ Petition No.

3515 of 2022 are the employees of the Bank and the Petitioner No. 2 more particularly is the certified Valuer appointed by the Bank. The Respondent No. 2 is the original Complainant. Since the challenge in the Writ Petitions arise of the same crime, both the Petitions are being decided by the present common Order.

3) By our Order dated 8th June 2023, both the Petitions were admitted. Mr. S. B. Shetye, learned counsel appears for the Petitioners and Mr. Vinod Chate and Mr. A. I. Satpute, learned A.PPs appear for the State. Mr. Viraj Parekh represented the Complainant during the admission hearing. Despite service, none appeared for the Complainant today.

4) While admitting the Petitions this Court *prima-facie* observed that, it is not the case of the Respondent No. 2/Complainant that the Petitioners had caused any criminal act viz. of either taking away any articles or causing damage to the property of the Respondent No. 2/Complainant or causing injury or harm to the family members but has alleged act of criminal trespass. It also recorded the facts of the case in brief and further observed that, it was in the backdrop of these facts that whether criminal prosecution against Respondent No. 2/Complainant can be maintained is the mute question to be looked into. The criminal proceedings against these Petitioners were thus directed to be stayed till final disposal of these Petitions.

5) It is the case of the Complainant as discerned from the First

Information Report ("F.I.R.") that, he was working as a Managing Director in the Yashwant Dudh Sangh, Shirala. Another society being Shivaji Cane Processors Limited is associated with the Yashwant Dudh Sangh, Shirala. Said Shivaji Cane Society had taken a loan from Shree Varna Sahakari Bank Ltd., Varnanagar. It is the case of the Complainant that, on 27th April 2022 when he was not at home, the employees of the Bank came to his house and told his wife that they had come to take photographs of the inside of their house. The Complainant's mother informed these bank officials that, they can do so once the Complainant returns home. Despite resistance, the employees of the Bank came inside the house and took photographs of the Bedroom, Hall, Kitchen and other places in the house. On inquiry the Complainant learnt that, the employees who had visited his house were the Petitioners in Writ Petition No. 3515 of 2022. It was thus his complaint that, these two employees came to his house and took photographs in his absence, without any notice only in the presence of his wife and his mother. According to the Complainant, they had unauthorizedly entered his private residence and thus committed the offense of house trespass.

6) On 10th May 2022, pursuant to a supplementary statement given by the Complainant, the names of the Petitioners in Writ Petition No. 3514 of 2022 being the General Manager and the C.E.O. of the Bank, were added as Accused Nos. 3 & 4. The allegation against them was that, it was on their instructions that, its employees including the valuer entered the

Complainant's house. This is the basis of the F.I.R. as well as the charge-sheet filed by the Police.

7) Mr. Shetye, learned counsel submitted that, Shivaji Cane Processors Ltd. failed to repay the loan taken from the Bank leading to initiation of recovery proceedings before the competent authority under the Maharashtra Co-operative Societies Act, 1960 ("the Act"). Accordingly, a recovery certificate was granted to the Bank. Bank then initiated the procedure for attachment and sale of property under Section 156 of the Act and the Rules made thereunder. A demand notice was issued to the Complainant and thereafter as per procedure his property was attached. Another notice was also issued to the Complainant calling upon him to hand over possession of the property, which Complainant failed to comply and in these circumstances, the bank took symbolic possession of the property. The procedure prescribed under the Act and the Rules made thereunder were followed and it is only thereafter that the Bank directed its employees to carry out valuation of the property. It is this action of the Petitioners which is complained of by the Complainant.

7.1) Mr. Shetye, learned counsel thus contended that, the F.I.R. is nothing but an attempt of the Complainant to obstruct the bank from enforcing its rights to recover the unpaid loan amount and the Petitioners have done nothing but acted in pursuance of the provisions of the Act. Furthermore, it is submitted that the General Manager and the C.E.O. were

not even present at the site of the alleged offense and dragging them in the criminal proceedings is a malicious tactic of the Complainant. Thus Mr. Shetye, learned counsel submitted that, the contents of the F.I.R. and charge-sheet, even if taken at their face value, do not disclose commission of any offense and for these reasons, urges us to quash the F.I.R. and allow the Petitions.

8) Learned A.PPs merely rely upon the contents of the charge-sheet which in fact corroborate the statements of the Petitioners. Despite notice, none appeared for the Respondent No. 2.

9) Having considered the matter in detail, we find that the F.I.R. and the criminal proceeding in question as far as the Petitioners are concerned, is an abuse of the process of the Court. From a plain but careful reading of the material brought on record, including the recovery certificate, the Orders of attachment of the property, documents indicating symbolic possession taken by the bank etc., the allegations against the Petitioners seem far-fetched and do not inspire confidence. The facts in totality evince that pursuant to a recovery certificate issued by the competent authority under Section 101 of the Act, attachment order was passed in respect of the complainant's house. Publications were made in the newspapers in consonance with the provisions of the Act. The Bank took symbolic possession of the said property. All the admitted facts thus indicate that the valuer accompanied by another employee of the Bank

were well within their rights to visit the house property and take photographs of the same for the purpose of valuation. The General Manager and the C.E.O. of the Bank were not even present at the house and are unnecessarily dragged in purely to harass the Bank and obstruct the recovery proceedings. It is also an admitted fact the till date neither is the loan repaid nor is there any stay on the recovery proceedings by any Appellate Court or Tribunal.

10) The offense of criminal trespass is complete only if there exists intent to intimidate, insult or annoy any person who is in possession of the property and then too if the entry in the property is unlawful. In the facts of the present case, admittedly symbolic possession of the said house is already with the Bank. The entry is lawful. The valuer is entitled to enter the house property, symbolic possession of which is already with the Bank and the entire purpose is to simply take photographs to facilitate valuation of the property to act in aid of selling the property to recover the dues of the Bank. The Bank and its employees have followed the procedure envisaged in the Act and the Rules made thereunder. The Complainant has deliberately failed to cooperate with the Bank. It is thus clear that, malice as alleged by the Complainant against the Petitioners is not only absent but is *vice-versa*. We find that, it is the Complainant who has set the criminal law in motion with a view to obstruct the Bank from carrying the recovery proceedings to their logical conclusion. The same is nothing but a

retaliatory tactic.

11) In a recent decision in the case of *Vishnu Kumar Shukla v. State of Uttar Pradesh*¹, the Supreme Court observed as under :

“23. On a careful conspectus of the legal spectrum, juxtaposed with our view on the facts and merits expressed hereinbefore, we are satisfied that there is no suspicion, much less strong or grave suspicion that the appellants are guilty of the offense alleged. It would be unjustified to make the appellants face a full-fledged criminal trial in this backdrop...”

12) The Supreme Court therein further referred to its observations in its decision in the case of *Priyanka Mishra v. State of Uttar Pradesh*² that

“...the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial’ and further gone on to hold that ‘the protection against vexatious and unwanted prosecution and from being unnecessarily dragged through a trial by melting a criminal proceeding into oblivion, either through quashing a FIR/Complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route, as the circumstances may be, in the deserving case, is a duty cast on the High Courts.”

13) In light of the discussions made hereinabove we are of the considered and firm opinion that, the Petitioners are to be protected against vexatious and unwarranted criminal prosecution and from unnecessarily

1. 2023 SCC OnLine SC 1582.

2. 2023 SCC OnLine SC 978.

being put through the rigours of an eventual trial. The allegations in the F.I.R. and charge-sheet, supported by the documents on record more particularly the letter of symbolic possession, the recovery certificate and, the attachment order taken at their face value, *prima-facie* does not disclose commission of any offense, least of all an offense of house trespass as defined in the I.P.C. Thus, we are inclined to allow the Petitions.

13.1) The criminal proceedings of Regular Criminal Case No. 428 of 2022 pending before the Chief Judicial Magistrate, Sangli, arising out of C. R. No. 158 of 2022 registered against them with the Vishram Bag Police Station, Sangli dated 29th April 2022 for the offense punishable under Section 448 read with 34 of the I.P.C. are quashed and set aside.

14) Rule is accordingly made absolute.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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