

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4250 OF 2022

Sangli District Primary Teachers
Co-operative Bank Ltd. Sangli

...Petitioner

Versus

1. The State of Maharashtra
2. Shri. Ananda Tukaram Sathe
3. Babasaheb Mahadev Patil

...Respondents

Mr. Umesh Mankapure a/w Mr. Nilesh Wable Advocate for
Petitioner.

Mr. S. S. Borulkar i/by Mr. Manoj Patil Advocate for Respondent
No.1.

Mr. Arfan Sait, APP for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd FEBRUARY, 2024

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1. The petitioner challenges order dated 8th April 2022 passed by learned Sessions Judge, Sangli in Criminal Revision Application No.110 of 2016 and order dated 13th August 2012 passed by learned JMFC, Palus below Exh.40 in RCC No.78 of 2008.

2. The petitioner is original complainant in C.R. No.55 of 1999 registered with Kundal Police Station, Sangli for offence under Sections 408, 409 read with Section 34 of the Indian Penal Code, 1860. On completing investigation, charge-sheet is filed and the case was registered

as RCC No. 78 of 2008.

3. The petitioners case is that first Additional Auditor Co-operative Society, Tasgaon after doing audit of petitioner bank submitted audit report in respect of misappropriation and also filed complaint at Kundal Police Station.

4. The complainant preferred an application under Section 311 of Cr.P.C. before the Court of learned JMFC, Paluj, Sangli on 9th July 2012. It was contended that, the witness be directed to produce the document situated in the said application. It was contended that re-audit report dated 1st July 1991 to 31st March 1997, re-audit report dated 1st April 1997 to 31st March 1998 are necessary to be produced on record in the proceedings. The application was opposed by accused by filing say. It was stated that the application is contrary to law. The witnesses referred to by complainant cannot be summoned as their statements were not recorded by investigating officer before filing charge-sheet. Vide order dated 13th August 2012, application was rejected.

5. The petitioner filed Revision Application Number 110 of 2016. The Revision Application was rejected vide order dated 8th April 2022.

6. Learned Advocate for petitioner submitted that, documents were indeed part of the charge-sheet. The Investigating Officer has filed affidavit

contending that, the said documents are part of charge-sheet. In the interest of justice, the application preferred by petitioner ought to have been allowed by the Court below. The Respondent/accused were employees of the petitioner and they were involved in misappropriation of the amount. The Court has vast power under Section 311 of Cr.P.C. to recall witness for adducing evidence.

7. Learned Advocate for Respondent No.3 Mr. Borulkar submitted that, initially the prosecution had applied for adducing secondary evidence in the form of office copy of audit report. The said application was allowed by learned Magistrate. Order was challenged before High Court. The High Court held that since copy of audit report was not supplied to the accused along with the charge-sheet and the documents were not produced earlier or record alongwith the charge-sheet, permission to adduce secondary evidence in respect to those documents cannot be granted. Now another attempt to produce same documents on record is made by filing application under Section 311 of Cr.P.C. The prosecution is trying to fill up lacunae.

8. The petitioner's case is that, the First Additional Auditor Society, Tasgaon after doing audit of petitioner, bank submitted audit report in respect of misappropriation and also filed complaint at Kudal Police Station on which C.R. No.55 of 1999 was registered for offence under Sections 408 and 409 read with 34 of the I.P.C. Investigation resulted into filing of

charge-sheet and the case was numbered as R.C.C. No. 78 of 2008. The Audit Report submitted by Auditor along with this complaint was missing from the record and therefore, the prosecution filed application vide Exh. 40 under Section 311 of Cr.P.C. for issuing summons to District Deputy Registrar Co-operative Society, Sangli as well as District Special Auditor, Co-operative Society, Sangli for production of Audit Report submitted by the complainant in original to these authorities. Learned Magistrate rejected the application vide Exh.40. The said order dated 13th August 2012 was challenged by preferring Revision Application. The petitioner's contention is that, in the Audit Report misappropriation of amount has been revealed. The First Additional Auditor, who conducted the audit filed complaint at Kudal Police Station about the misappropriation. The application was filed for issuance of summons to the authorities to whom the First Additional Auditor forwarded the original audit report. Learned Sessions Judge vide order dated 8th April 2022 observed that, the prosecution wants to produce the Audit Report which was not produced along with charge-sheet. The Audit Report is not produced along with charge-sheet by the prosecution. Now, the said report cannot be taken on record by issuing witness summons, particularly when the High Court has rejected the prayer of the prosecution in the form of secondary evidence.

9. From the aforesaid circumstances it is apparent that, the prosecution

had preferred impugned application for production of the Audit Report. It was not produced with charge-sheet. Learned Sessions Judge has rightly observed that, the prosecution intends to produce the report which was not produced along with charge-sheet. I do not find any infirmity in the orders under challenged. Indirectly, the applicant is seeking same relief which was rejected by High Court. This application is made belatedly. Both the Courts have rejected the application. The prosecution is trying to fill up lacunae by preferring the application under Section 311 of Cr.P.C. although, previous order was set aside by High Court. I do not find any reason to interfere in the impugned orders.

ORDER

Criminal Writ Petition No. 4250 of 2022 stands rejected.

(PRAKASH D. NAIK, J.)