

Order passed below Ex.26 in R.C.C.No.146/2009.

1) The present application is filed by applicants-accused nos.9 and 12 under Section 239 of Cr.P.C. They have stated that the complainant has carried out audit of Bhistbagh Gramin Bigar Sheti Co-operative Society from 01/04/1996 to 31/03/2008 and thereafter filed present complaint. The present applicants-accused persons were elected as a director of the society during the period 06/11/1996 to 31/03/1997. The accused no.9 is in service, while accused no.12 is running business. The present applicants-accused persons never remained present for any meeting due to service and business. The present applicants-accused persons came to know that they are unable to give time to the society, they gave their resignation of Directorship of the Society. The applicant-accused no.9 resigned on 29/09/1997 and the applicant-accused no.12 resigned on 17/12/1998. One Govind Tupe was taken as Director due to resignation by the accused no.9. Thus the present applicants-accused persons were not directors of the society since 1997. So they are not liable for any act of the society done during the period 1996 to 2001. Further work of verification of loan proceeding is of the manager. It is the duty of manager to get execute necessary documents from the borrower after sanctioning loan proposal. The director is not liable for the mistakes of manager. The complaint is filed without examining proceeding book in which resignation of present

accused is accepted. Considering all these facts, the accused nos.2, 9 and 12 prayed to discharge them as per Section 239 of Cr.P.C.

2) Learned APP has filed say at Ex.30 and strongly objected the application. Learned APP has contended that the accused no.1 was Chairman, accused no.2 Vice Chairman, accused nos.3 to 14 Directors and accused no.12 a Secretary of society. The society has disbursed loans illegally and without taking security. The accused persons have disbursed loans to themselves and their relatives. The applicants-accused persons have misappropriated amount of Rs.13,56,490/-. There is sufficient evidence against applicants-accused persons. The applicants-accused in colluding with each other have committed breach of Trust. They are jointly and severally liable for the act of the society. The applicants-accused persons have no right to file the application for discharge. They have no right to file documents at this stage. The application is filed only to prolong the trial. Considering all these facts, learned APP prayed to reject the application.

3) Heard both sides. Learned Advocate for the applicants-accused persons has argued that the authority has been given to the then Chairman to sanction and disburse the loan. No loan has been disbursed to the applicants-accused persons or his relatives. It is the duty of staff of

society to maintain record in respect of loan transactions. The applicants-accused persons were not present for any meeting of the society. They have not sanctioned and disbursed loan to any borrower. After resignation, present applicants-accused persons never participated in any affair of the society. The alleged mis-appropriation is after the resignation of the present applicants-accused persons. So they are not liable for any act of the society or its any member after their resignation. Further, the complaint is filed by the auditor. He has not taken permission before filing complaint as per Section 81 (2) of the Maharashtra Co-operative Societies Act. Thus there is absolutely no evidence against accused. Further, the report at Ex.155/1 of inquiry Officer Adv.A.N.Mule clearly shows that the present applicants-accused persons are not liable for any misappropriation of amount in the society. Considering all these facts learned Advocate for the applicants-accused persons prayed to discharge the applicants-accused persons under Section 239 of Cr.P.C.

4) Learned APP has argued that the applicants-accused persons have no right to file any document at this stage. The Court has to take into consideration the material produced by the prosecution alone and not by the accused. The alleged mis-appropriation took place between

the period 1996 to 2008. During this time, the applicants-accused persons were acting in the society as a Chairman or Vice Chairman or Secretary or Directors. So they are jointly and severally liable for the acts done on behalf of the society. There is sufficient evidence to record to proceed against the applicants-accused persons. Hence learned APP prayed to reject the application. For that she relied upon following case laws.

1.State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359 (Para No.18)

"At the state of framing of charge hearing the submission of the accused has to be confined to the material produced by the Police".

2.Sudarshan s/o. Devidasrao Bhore V/s. Jagjeetsingh Chiragiya and another, 2006 ALL MR (Cri) 3154(Para No.7)

"It is very much permissible for the Court to appreciate evidence for limited purpose of ascertaining whether a prima-facie case has been made out. However roving enquiry and detailed analysis of the evidence is not permissible".

5) Perused the complaint and documents on record. The complaint is filed by Special Auditor of Co-operative Society, Ahmednagar - Suresh Nana Pawar after making audit of Bhistbagh Gramin Bigar Sheti Co-operative Society of the period 01/04/1996 to

31/03/2008. It is mentioned in the complaint that the applicants-accused persons have committed breach of trust of members and depositors of the society. They have knowingly disbursed the loan without taking sufficient security and necessary documents. They have disbursed loans illegally and mis-appropriated amount of society. It is clearly mentioned in the complaint that the applicants-accused persons in colluding with each other have misappropriated the amount. For that Investigating Officer has recorded statement of in all 14 depositors and seized various registers under panchnama. The Investigating Officer has submitted charge-sheet on 11/03/2009 after detailed investigation. So at this stage, it cannot be said that there is no evidence against the applicants-accused persons.

6) The applicants-accused persons nos.9 and 12 have produced zerox copies of their resignation letter at Ex.28/1 to 28/3. But there is no provision in Cr.P.C. which grants accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of trial. If the contention of the accused is accepted and his documents are taking into consideration, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of

charge, the defence of the accused cannot be put forth. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the Police. So at this stage, it is not just and proper to consider the documents produced by the applicants-accused persons. It would amount to mini trial. At the stage of framing of charge, roving and fishing inquiry is impermissible. The material as produced by the prosecution alone is to be considered and not the one produced by the accused.

7) As per Section 239 of Cr.P.C, at the stage of framing of charge it is required to see whether prima-facie case has been made out or not. The question whether the charge framed will eventually stand proved or not can be determined only after the evidence is recorded. So at the stage of framing of charge deciding the prosecution case on merits is to be deprecated. Here the case laws cited by the learned APP are applicable.

8) Considering all evidence before the Court, there is sufficient evidence against the applicants-accused persons to proceed further. The report by Adv.A.N.Mule dtd.14/01/2015 is after filing of charge-sheet in

the Court. The report is produced on record by accused no.3. So it is not taken into consideration at this stage. The documents about resignation are also not considered at this stage. There is sufficient prima-facie evidence to make out case against the applicants-accused persons. It is not just and proper to discharge the applicants-accused persons. Hence the order.

Order

The application is rejected.

Sd/xx

Date :- 28/11/2017.

(R. V. Mohite)
3rd Jt. Civil Judge, S.D.
Ahmednagar.