

Order passed below Ex.11 in R.C.C.No.155/2009

1) The present application is filed by applicant-accused no.5 under Section 239 of Cr.P.C. He has stated that the present case came to be registered at the investigation of Special Auditor of Co-operative Society - Suhas Nana Pawar. As per the contents in the complaint, the managing committee of society miserably failed in performing their duties and as a result of which all have committed mis-appropriation of the amount as alleged in F.I.R. The present accused is no way concern with any of the allegations made in the complaint. The present accused is practicing Doctor at Ahmednagar. He is practicing for last 20 year. He is permanently residing at Ahmednagar. He has resigned the Directorship of the society on 12/03/2003. He was never called for any meeting of the society. He never attended any meeting since inception of the society. He was never served with notice about general of special meeting of the society. He never signed any resolution about disbursement of loan. The present applicant-accused falsely involved in the offence with malafide intention. There is absolutely no evidence on record to connect the present applicant-accused with the present case. There is no single complaint against present applicant-accused by any member, depositors or borrowers of the society. Considering all these facts, the applicant-accused No.5 prayed to discharge him as per Section 239 of Cr.P.C.

2) Learned APP has filed say at Ex.16 and strongly objected the application. Learned APP has contended that the accused no.1 was chairman, the accused no.2 was vice chairman and the accused no.3 to 14 were directors while the accused no.12 was secretary of the society. They sanctioned loan in their names as well as in the name of their relatives. They have mis-appropriated the amount for their own benefit. So they are jointly and severally liable for the work of society. So no question arise to discharge the applicant-accused. There is sufficient evidence to frame charge against the applicant-accused. Hence learned APP prayed to reject the application.

3) Heard both sides. Learned Advocate for the applicant-accused 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 applicant-accused or his relatives. It is the duty of staff of society to maintain record in respect of loan transactions. The applicant-accused person are not present for any meeting of the society. He has not sanctioned and disbursed loan to any borrower. After resignation, present applicant-accused never participated in any affair of the society. The alleged mis-appropriation is after the resignation of the present applicant-accused person. So he is 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 applicant-accused is not liable for any misappropriation of amount in the society. Considering all these facts learned Advocate for the applicant-accused prayed to discharge the applicant-accused under Section 239 of Cr.P.C. For that he relied upon following case law.

Kishor Pandurang Garad V/s. State of Maharashtra, 2012 ALL MR (Cri) 2753 (para no.7)

"The criminal proceedings pursuant to the registration of Crime No.86/2011 registered at City Police Station, Khamgaon against the present applicant would be an abuse of process of law and that the applicant would have to undergo the ordeal of criminal proceedings initiation against him for offences punishable under Section 406, 408, read with Section 34 of I.P.C., although he is not concerned with the said society".

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 misappropriated 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 applicant-accused.

6) 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. In the case law cited by the applicants-accused persons never complied for the membership of the society and therefore there was no possibility of his being director of the said society. But in the present matter is not disputed that the applicants-accused persons were directors of the society. Thus the facts in the cited case law are total different than the facts before the court. Hence it is not applicable here.

8) Considering all evidence before the Court, there is sufficient evidence against the applicant-accused to proceed further. The report by Adv.A.N.Mule dtd.14/01/2015 is after filing of charge-sheet in the Court. There is sufficient prima-facie evidence to make out case against the applicant-accused. It is not just and proper to discharge the applicant-accused. Hence the order.

Order

The application is rejected.

Sd/xx

Date :- 03/02/2018.

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