

Common order passed below Exhs.1 and 111 in
Regular Criminal Case No.60/2009

By this application, accused No.12 sought to discharge him as per Section 239 of the Code of Criminal Procedure 1973 ("the Cr.P.C." for short).

2.In short, the facts giving rise to application are that, accused No.12 was the director of the Co-operative Society viz. Shantisagar Nagari Sahakari Patsantha, during the period of 31/10/2002 to 3/09/2002. The said society involved in banking business. The charge sheet came to be submitted against the present as well as ex-directors of the said society alleging the offences punishable under sections 408, 409, 420, 465, 467 read with 34 of the Indian Penal Code, 1860 ("the Code" for short) and sections 147(C) and 147(O) of the Maharashtra Co-operative Societies Act, 1960. According to accused No.12, he obtained degree of M.D. in 1986 and doing the practice since 1990 at Karad. According to him, he was serving as Honorary Director of the said Patsantha and had been given the post of Vice Chairmanship of the said Patsantha. According to him, he attended only 2 meetings during his directorship and therefore, he is not at all concerned with the affairs and transactions came to be done on behalf of said Patsantha during his tenure. Therefore, the alleged allegation of misappropriation and forgery against him are baseless and without any material. There is absolutely no material against him to frame charges for offences punishable under sections

408, 463, 465, 467 of the Code as well as sections 147(C) and 147(O) of the Maharashtra Co-operative Societies Act. According to him, prior to the present charge sheet, one Prabhakar Shinde had filed criminal complainant bearing No.187/04 in the Court of learned J.M.F.C at Karad along with other accused persons for the same offences. In view of withdrawal pursis as well as nil report submitted by the police, the said complaint came to be dismissed as per section 203 of the Code. Therefore, according to him, the subsequent prosecution against him is not maintainable. On this premises, he sought to discharge him.

3.Heard learned council for both sides. Before proceeding further, it would be just and proper to notice certain admitted facts to narrow the controversy. It is not in dispute that, accused No.12 is the ex-director of the said Patsanstha and he was director during the period of 31/10/2002 to 3/09/2002. Further, it is not dispute that, he was holding post of Vice-Chairman of the said Patsanstha. It is further not in dispute that, he is the Medical Practitioner and has obtained M.D. Degree in the field of Medicines. He is practising medical profession at Karad. It is further not in dispute that, the criminal complaint bearing No.187/04 had been filed on behalf of Patsanstha by one Prabhakar Dhondi Shinde against him as well as, other directors of the said Patsanstha alleging the same offences. The said complaint came to be dismissed as per section 203 of the Cr.P.C. on 15/07/2006 in view of withdrawal pursis as well as nil report submitted by the police who were

directed to investigate the matter as per section 156(3) of the Cr.P.C. It would be worthwhile to notice section 239 and 240 of the Cr.P.C. which deals with the discharge of the accused and framing of the charge against him, respectively.

4. Sections 239 and 240 of the Code,

S. 239. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

S. 240. (1) If, upon such consideration, examination, if any and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

5. It has been held by the Apex Court in the case of State of H.P. v. Kishanlal, reported in AIR 1987 SC 773 that all that is

required at charge framing stage is to see whether a 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 that at the charge framing stage deciding the prosecution case on merits is to be deprecated. It has been held by the Apex Court in the case of Century Spinning and Manufacturing Company Ltd. v. State of Maharashtra, reported in AIR 1972 SC 545 that the word 'groundless' means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in section 239 of Code, means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against accused. If no prima facie case regarding the commission of any offence is made out, it amounts to a charge being groundless.

6.First of all other contentions, I would like to consider the contention as to maintainability of the subsequent prosecution of accused No.12 even after the dismissal of complaint bearing its No.187/04 for the same offences. It has been held by the Apex Court in the case of Pramatha v. Saroj, reported in AIR 1962 SC 876 that, there is no bar for entertainment of second complaint even though the earlier or first complaint is dismissed as per section 203 of the code. However, for maintaining the second complaint, it should be shown that, there are special circumstances for the same or earlier order of dismissal of the complaint came to be passed in view of error apparent on the face of record or incomplete record or

misunderstanding of the case. The previous complaint came to be dismissed as per section 203 of the Cr.P.C. for want of sufficient grounds to proceed against accused persons, in view of withdrawal pursis filed by the complainant, as well as nil investigation report submitted by the police. In strict sense, it can not be termed as the withdrawal of the said complaint and ultimate discharge of the accused persons on the basis of the same. In the said complaint, withdrawal pursis came to be taken as a supportive fact for coming to the conclusion that there are no sufficient grounds to proceed against the accused persons and ultimately, in view of nil police report, it came to be dismissed as per section 203 of the Cr.P.C. Here, the report came to be filed on behalf of the government by the Auditor of the Co-operative Societies and thereby, the prosecution came to be launched. Earlier, complaint came to be filed by the private complainant on behalf of the said Patsansta. It is further important to note here that, now the stage of taking cognizance is over and matter is reached to the stage of framing of charge. It is post cognizance stage. Therefore, it would not be just and proper to consider the point of maintainability of the prosecution at this stage of framing charge. Rather such plea should have to be considered at the time of issuance of process. But such material was not been before my learned predecessor while issuing the process. Apart from this, whether there are special circumstances or not for launching the second prosecution could be considered after the trial.

7. There is no kind of material against accused No.12 for framing charge for the offences of cheating and dishonest inducement of the delivery of the property, and forgery. Therefore, the accusations in respect of the offences punishable under sections 420, 465 and 467 against accused No.12 are groundless.

8. The prosecution produced various documents sanctioning the loans during the tenure of accused No.12 by the said Patsanstha in violation by-laws prescribing the limit of Rs.5,00,000/- in the nature of security documents, promissory notes in the name of Babaso Shankar More, Dattatraya Kadam, Anil Gujar, Miss. Sunita Gujar, Vaishali Kadam, Anil Pawar, Bhagwat Kanase, Tanajirao Kadam, Chandrakant Kadam, Prakash Kadam, Tanaji Kadam, Vinayak Patwardhan, Sayajirao Patil and others. These documents contain the nature of loan and amount thereof. The by-laws produced along with charge sheet show that for the repair work of residential house, or domestic loans, outer loan limit is Rs.30,000/-, Rs.30,000/- for vehicle loans, Rs.50,000/- for professional loans. All this documentary material prima facie shows that the directors of the Patsanstha granted loans exceeding Rs. 5,00,000/- in violation of by-laws and that too cause loss to the Patsanstha. Therefore, there are prima facie ground for presuming that accused No.12 committed the offence of criminal breach of trust punishable under section 406, criminal breach of trust by banker punishable under section 409 of the Code. Accused No.12 was not at all the servant of the said Patsanstha and

therefore no charge punishable under section 408 of the Cr.P.C. could be framed against him. There is sufficient material for framing charge against him for the offences punishable under sections 147(C) and 147(O) of the Maharashtra Co-operative Societies Act.

9.The learned counsel for accused No.12 relied on a judgment in the case of Bhagwan v. Ramesh, reported in 2006(12) LJSOFT 228. In this case, the previous complaint came to be withdrawn as well as the offence punishable under sections 406 read with 34 of the Code came to be compounded, as per sections 257 and 320 of the Cr.P.C. and accordingly, the accused came to be acquitted. Therefore, the High Court held that the subsequent complaint on the same facts is not maintainable as per section 300(1) of the Cr.P.C. Here, there was no compounding of offences in the previous complaint and it had been dismissed as per section 203 of the Cr.P.C. Therefore, there was no decision on merit. Hence, the case law is distinguishable on facts and not helpful for accused No.12. He further relied on a judgment in the case of Kolla v. Gorantla, reported in 2011(3) LJSOFT (SC) 14. In this case, the accused had been convicted as per section 138 of the Negotiable Instruments Act, 1881 and he again was being prosecuted for the offence punishable under section 420 of the Code on the same facts. Therefore, by applying section 300(1) of the Cr.P.C., his subsequent prosecution under section 420 of the Code came to be declared as barred. Hence, this case law is distinguishable on facts and not helpful for the cause of

accused No.12. He further relied on judgments in the case of K. Ramakrishna v. State of Bihar, reported in 2000 DGLS(Soft.) 1466, Arun v. Anita, reported in AIR 1999 SC 2071 and Satish v. Delhi Administration, reported in 1996 SCC (Cri) 1104. This case laws are also distinguishable on facts and not helpful for the cause of accused No.12.

10.Ultimately, the application of accused No.12 is liable to be rejected seeking complete discharge. In the result, I pass the following order,

ORDER

1.The application stands rejected and accordingly the order.

Sd/-

Kadegaon
Date 06/12/2012

(M. M. Gadiya),
Judicial Magistrate F.C.,
Kadegaon.