

RCC No. 121 of 2018
State V/s Laxman+01
CNR No.MHWS080008612018

ORDER BELOW EXH. 10

The applicant/accused no. 01 has presented this application under section 239 of the Code of Criminal Procedure (CrPC) seeking his discharge from the offences registered against him under section 406, 409, 420, 467, 468, 471, 34 of the Indian Penal Code (IPC).

The Prosecution's case:

02 The crime bearing no. 3/2018 is registered with Risod Police Station on the information given by one Vitthal Gulab Vasu who is the General Head Manager of Sant Amardas Credit Co-operative Society, Risod ("The Society" in short). The society is having its head office at Risod and branches in Washim district at villages like Haral, Shelu Bazar etc. The applicant was working as the Manager of the Haral branch situated at Haral Tq-Risod district-Washim. The society was also maintaining its account in ICICI Bank, Washim. For effective functioning of the society, the applicant had authority to transfer the amount from the societies account maintained with ICICI bank to head office Risod and then to get the amount distributed for purposes related to his branch.

03 It is alleged that the applicant has mis-utilized the authority given to him and transferred (through RTGS)

Rs. 41,63,800/- from the account of the society maintained with ICICI bank to his personal accounts maintained at Risod in the Bank of Maharashtra and Washim Urban Co-operative Society. The informant has set out details of these transactions in schedule 'D' annexed with his first information report (FIR). It is also alleged that the applicant further transferred this amount into the accounts of Rupali Hajare, Pushpabai Hajare, Chhagan Hajare, Rameshwar Dange and Santosh Dange. Rupali is the wife, Pushpabai is the mother and Chhagan Hajare is the father of applicant and their accounts in which the applicant has transferred amount are maintained in the societies branch at Haral.

04 The allegations also report that the society is having its warehouse at village Sawad Tq-Risod Dist-Washim. The farmers store their agricultural produce in the warehouse and then the supervisor and warehouse keeper issue warehouse receipts to them. The farmers in need of loan get it by depositing those warehouse receipts in the society. The society keeps original warehouse receipt until the farmer has cleared the entire loan amount due against him. The supervisor and warehouse keeper were under the control and supervision of the applicant. However, the applicant using his position, released the agricultural produces of the farmers named in Schedule-B though the loan amount was still due against them. It is also alleged that the applicant sanctioned loan to the farmers named in

Schedule-C without keeping their agricultural produce in the warehouse as a security. He issued false warehouse receipts and misappropriated the entire loan amount by himself.

05 This apart, it is further alleged that the applicant has pretended to have issued loan against 'Fix Deposits' to some persons named in Schedule-A. However, none of them had claimed loan as such and all are having their original F.D. receipts with them. Thus, the applicant has prepared forged F.D. receipts for issuance of the loan amount and misappropriated the same. He has also taken with him the entire record relating to these fix deposits, warehouse receipts and the loan accounts.

06 Heard Mr. R.C. Chaumwal, the learned advocate for the applicant and Mr. G.B. Khillare, the learned APP. Perused the entire record including written notes of arguments filed on behalf of applicant vide Exh-15.

SUBMISSIONS

07 The applicant has submitted that the original files regarding fix deposits, warehouse receipts and entire record is not seized during investigation though the accused was remanded to police custody for sufficient time. There is no evidence that the warehouse keeper released agricultural produce on the say of accused. The registers maintained by the warehouse keeper and the other record with him is also

not seized. The warehouse keeper and manager are not made accused despite allegations that applicant with their help misappropriated the amount. It is also submitted that no document relating to withdrawal of money by accused has been seized. Mere transfer of some amount to the account of accused does not prima facie prove any offence against him. The supplementary statement of accused is recorded after eight months of FIR wherein it is alleged that accused transferred the amount in his account through RTGS. However, the RTGS record is also not seized. It is also submitted that RTGS and NEFT facilities are only available with the head office of the society and the accused has no hand in this process. The transfer of amount is done by the head of the society itself and not by accused.

08 It is also urged that no amount was entrusted to accused without which section 406 and 409 of IPC cannot be attracted. There is no misappropriation by the accused as the entire amount is re-transferred to the societies account and therefore, there is no wrongful gain to the accused and no wrongful loss to the society. The complainant has no locus to file the complaint as no offence against his is committed. The accused is not a banker and he is merely an employee. Therefore, section 409 of IPC cannot be made applicable to him. The findings recorded by the Hon'ble High Court while rejecting the bail application of accused cannot be looked into in considering this

application. Lastly, it is submitted that there is total dearth of material to frame charge against accused in any of the alleged offence. Trail against him would be an abuse of the process of court and wastage of valuable public time. With these contentions, the applicant has also pressed into service following judgments.

- 1) *Maharashtra Hybrid Seeds Co. Ltd. And another vs State of Maharashtra 2016 ALL MR (Cri) 4360*
- 2) *Robert John D'souza vs Stephen 2015 Cri. L.J 4040*
- 3) *Gopesh Chandra Pal vs Nirmal Kumar Dasgupta 1949 CJ (Cal) 94*
- 4) *Nadir Ali Barqa Zaidi and others vs State of UP 1959 CJ (All) 144*
- 5) *Hemantkumar @ Hemkumar Sunil Thakur vs State of Maharashtra 2016 All MR (Cri) 308*

09 On the contrary, the learned APP resisted his application by filing his say overleaf. According to him, there is strong prima faice evidence available against accused. The account statement of bank and other material points out the guilt of the accused. He submitted that this is not a case of discharge and the other minute things may come on record during trial only. Hence, he insisted for rejection of the application.

CONSIDERATIONS

10 The record depicts that the applicant is having his personal accounts at Bank of Maharashtra branch Risod

and Washim Urban Credit Cooperative Society branch Risod. The statements of these accounts vividly show that the applicant has time and again transferred huge sums of money from the account of society maintained with ICICI bank. It is true that there are reverse entries regarding transfer of some amounts from the accounts of accused to the head office of the society. However, the record further shows that after the amounts are transferred to the head of the society, there is further transfer of these amounts into the accounts of Rupali Hajare, Rameshwar Dange, Pushpabai Hajare, Chagan Hajare and Santosh Dange. Rupali is the wife, Pushpabai is the mother and Chagan Hajare is the father of applicant. Their statements evince that they had no knowledge of these accounts and they were not operating it. The defence taken by accused regarding this transfer is that it was done by the head of the society and not by himself. However, this court is unable to understand as to why the head office of the society has transferred such huge amount into the accounts of near ones of the accused without his hand therein. Moreover, there is a frequent withdrawal of amount from the accounts of the persons mentioned above. Therefore, it cannot be said that the society had no wrongful loss and there was no wrongful gain to the accused.

11 It is true that no original document is present on record. However, the court is not supposed to predict as to

what will happen during trial and what will be its fate in absence of necessary documents, if any. By this time, the court can only see that there are statements of accounts which are pointing out that huge amount is transferred to the accounts of accused and it is further transferred into the accounts of his siblings and friends. The *modus operandi* of every such transfer is an aspect of trial and therein the court will have to decide what are the necessary documents to prove the same. The facts involved in the present case are totally different from the facts which were involved in the citations relied upon by accused. In *Hemant Kumar supra* the accused had met the complainant in their personal capacity and they were not the employees of a bank unlike in the present case. Some amount was transferred in their account and the Hon'ble High Court had held that mere transfer of amounts to accounts of accused would not prima facie make out any offence against them. However, as observed earlier, there is no plausible explanation about huge transfer of amount into the accounts of accused especially when he was having authority over transfer of amounts. Therefore, the facts of present case are different from *Hemant Kumar supra*. Moreover, on the basis of facts of the present case, the Hon'ble High Court while disposing applicant's application for anticipatory bail has observed that '*a manager of the society to accepts funds from the members for the purpose of investment and promises payment of interest thereon would be a person, who accepts the funds*

for the purpose of carrying on to the business of a banker.'

Therefore, in this view of the matter, it cannot be said that section 409 of IPC cannot be charged against accused.

12 The end result of the discussion so far is that there is prima facie evidence against accused sufficient to frame charge. This is not a case wherein there is absolute lack of evidence. The statements of accounts are expressive and the court can reach to a just conclusion only upon a full fledged trial. Therefore, the court is convinced to pass following order.

ORDER

Application Exh-10 is rejected.

Sd/-
(P.P.Giri)

Date: 06.11.2019

Judicial Magistrate First Class,
Risod

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment are same word to word, as per the original Judgment.

Name of the Stenographer : P. D. Rudrakshwar

Name of court : C.J.J.D.& JMFC;Risod

Date : 06-11-2019

Judgment signed by the
Presiding Officer : 06-11-2019

Judgment uploaded on : 13-11-2019