

COMMON ORDER BELOW EXH. 306, 407 and 502

Application Exh. 502 is made by accused No.5 Shivaji Bhaurao More, application Exh. 407 is made by accused No.7 Sanjay Hariram Agarwal and application Exh. 306 is made by accused No.10 Sunil Chatrapal Kedar, all under section 239 Criminal Procedure Code for discharge. Perused the applications and record. Heard Ld. Adv. Shri. A.D.Gapat for accused No.5, Adv. Shri.M.S.Patil for accused No.7 and Adv. Shri.P.M.Nalegaonkar for accused No.10. Ld. Special Public Prosecutor is absent.

2. The prosecution case, in short, is that all ten accused have hatched a criminal conspiracy to cheat the Osmanabad District Central Cooperative Bank Ltd. Osmanabad (for short "O.D.C.C. Bank")for Rs. 30 crores. At the relevant time deceased accused No.1 was the Chairman of O.D.C.C.Bank and accused No.10 Sunil Kedar was the Chairman of Nagpur Dist. Central Co-op. Bank Ltd., Nagpur (for short, " the N.D.C.C.Bank"). There was a collusion between accused No.1 and 10 to purchase government securities through Home Trade Ltd. Washi, New Mumbai, unauthorized broker. Thereafter on 31/1/2002 the N.D.C.C. bank got credited their 30 crores as a deposit in the account of O.D.C.C. bank maintained with Maharashtra State Cooperative Bank Ltd. Mumbai. Then on 1/2/2002 the accused No.4, Deputy Chief Officer of O.D.C.C.Bank, at the instance of accused No.1 and 3 unauthorizedly got credited the said 30 crores in the account of said Home Trade Ltd. for purchasing government securities and on the same day Home Trade Ltd. got credited an amount of Rs. 29,99,99,766-67 ps. in the account of N.D.C.C.Bank with the Maharashtra State Cooperative Bank Ltd. Mumbai. Thus it is the case of prosecution that deceased accused No.1, Chairman of O.D.C.C.Bank and accused No.2 to 6 being main officer bearers of the said bank, without having prior permission

from the Commissioner, Cooperative Societies, accepted a deposit of Rs. 30 crores from N.D.C.C.Bank and in violation of R.B.I. directions paid sum of Rs. 29,99,34,591/- to Home Trade for government securities. Thus all accused in furtherance of their common intention have committed offences punishable under sections 120(B), 218, 406, 409, 420, 468, 471 r/w. 34 of I.P.C.

3. In his application Exh.502 the accused No.5 has contended that he has been falsely involved in this case. He was not concerned with the incident in question. He was joined as Deputy Chief Officer (Administration) of O.D.C.C. Bank from 14/2/2002 to 5/3/2002 and thereafter on 6/3/2002 to 27/3/2002. He has written the proceeding of the bank as per directions of the General Manager and except this role he did nothing. As per service rules the subordinate to follow the directions of superiors. It is also contended that in the departmental inquiry against him it was found that he has not committed any offence. Even in another inquiry conducted by three members it was revealed that this accused was not concerned with the alleged incident and therefore he again joined the bank on 8/8/2004 till his retirement on 2/12/2005. Lastly it is contended that this accused is suffering from serious disease and Angioplasty was performed on him at the hospital in Pune. According to this accused, there is no iota of evidence against him and hence he may be discharged.

4. In his application Exh.407 the accused No.7 has contended that his Home Trade Company is registered with SEBI and therefore, it cannot be said that said company could not enter into transaction in respect of government securities. Home Trade is a member of Bombay Stock Exchange, National Stock Exchange and Pune Stock Exchange. It is also contended that considering the contract notes issued in respect of government securities the dispute is of purely civil nature which can be

resolved by referring the matter to Arbitrator at Bombay as per Bombay Stock Exchange Rules. However, prosecution has given a colour of criminal nature. The dispute is within the jurisdiction of Bombay and hence it is necessary to refer it to Arbitrator and the present prosecution is unwarranted. There is no prima-facie case against this accused and he is entitled to be discharged.

5. Accused No.7 further contended that his company has honored its commitment of delivering government securities from time to time for the various purpose to whom contract notes were issued. It is also contended that merely because non routing and non reporting the transactions to the stock exchange does not invalidated the contract notes issued by the member of the company. It is further contended that the procedure and practice followed by brokers/the company in execution and completion of their market transaction should be understand. According to accused, the present prosecution cannot be continued against him and his company. The ingredients of offences in question are not proved. There was no malafide intention on the part of accused No.7. He, therefore, prayed for discharge.

6. In his application Exh. 306 the accused No.10 has contended that if the evidence produced by the prosecution is perused there is no single document showing his involvement in the case. The role played by his N.D.C.C.Bank is as a depositor only. There is no prima-faice case against him and therefore, it would be just and proper to discharge him.

7. In support of the application the accused No.5 has submitted certain documents with list Exh.507 and 510. From the said documents it appears that on 30/05/2002 he was suspended, after inquiry he was exonerated, suspension was then cancelled and he was again inducted in the service. Finally, he retired on 2/12/2005 as he completed age of 58 years.

Ld. Adv. Shri. A.D. Gapat for accused No.5 has submitted that at the time of offences in question accused No.5 was the Banking Officer and he followed the directions of his superiors otherwise there would have been misconduct on his part and therefore accused No.5 finally prepared proceeding of the meeting of Board of Directors roughly which was then verified by the Chief Officer. In his submission, merely because the proceeding of the meetings were prepared by accused No.5 no criminal act is to be attributed. It is also submitted that accused No. 5 was not knowing what was going on in O.D.C.C. Bank during the period of incident in question. Except writing proceeding of the meetings there was no role on the part of accused No.5. It is also submitted that during departmental inquiry conducted by O.D.C.C. Bank through Inquiry Officer Adv. Shri.G.R.Joshi nothing was found against No.5. It is also submitted that in the present case also there is no iota of evidence against accused No.5 and hence he deserves to be discharged. Referring some copies of medical papers of accused No.5 it is submitted that accused No.5 has undergone for Angioplasty, suffering from blood pressure etc. and therefore there is no need to ask him to go for trial as he was totally innocent.

8. Ld. Adv. for accused No.7 has submitted that looking to the prosecution case and investigation papers there is no prima-facie case against accused No.7. Ld. Adv. Shri.P.M.Nalegaonkar for accused No.10 has submitted that making deposit of Rs. 30 crores by N.D.C.C. Bank with O.D.C.C. Bank is not wrongful act nor any permission of any authority was needed for accepting the said deposit by O.D.C.C. Bank. How that amount is to be utilized by O.D.C.C. Bank is their look after. The N.D.C.C. Bank was not concerned with the transaction between the O.D.C.C. Bank and Home trade nor accused No.10 was concerned with the transaction and still he has been unnecessarily involved in the present case.

9. In support of his submissions Ld. Adv. for accused No.5 has relied on certain authorities. In Netai Dutta Vs. State of West Bengal (2005(1) B Cr C (SC) 666) the accused was charge-sheeted for the offence punishable under section 306 IPC. He had filed petition under section 482 Cr.P.C. for quashing criminal proceeding. It was found that in the suicide note of victim except referring the name of accused there was no reference of any act or incidence against accused. Except that suicide note there was no allegation by the complainant that accused was harassing the victim. The case registered against the accused was without any factual foundation. It was also found that the contents of the alleged suicide note did not in any way make out the offence against the accused. The prosecution initiated against him would only result in sheer harassment to him without any fruitful result. Therefore the Apex Court quashed the criminal proceeding.

10. In Madan Singh V/s. State of Gujarat (2010(4) B Cr C 284 (SC) the accused had filed petition under section 482 Cr.P.C. for quashing prosecution for offences under sections 306 and 107 IPC. On the facts it was observed that merely because a person had a grudge against his superior and he committed suicide on account of that grudge, even honestly feeling that he was wronged, it would not be a proper allegation for basing charge of abetment of suicide against such superior. It was also observed that unless there is specific allegation and material of definite nature, (not imaginary or inferential one), it would be hazardous to ask accused to face the trial.

11. Again, in Satish Mehra V/s. State of N.C.T. of Delhi & Anr. (2013 (1) B Cr C 480 (SC) while dealing with petition under section 482 Cr.P.C. the Apex Court has observed that the Criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may

be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.

12. In Arun Vyas V/s. Anita Vyas [1999(2) B. Cr. C. 359 (SC)] the Apex Court observed that, section 239 has to be read along with Section 240 Cr.P.C. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with Section 240 Cr.P.C. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused.

13. Ld. Adv. for accused No.10 has relied on decision of Kerala High Court in Beevi Vs. Ismai (2000(3) Crimes 501) to content that at the stage of framing charge the Court has to apply its mind whether or not there is any ground for presuming commission of offence.

14. Keeping in view the above legal position the prosecution case is to be seen. In the instant case it appears from the statements of witnesses recorded by Investigating Officer and documents collected by him that in the meeting of Board of Directors of O.D.C.C.Bank held on 5/1/2002 one of the subjects discussed was acceptance of deposits from other banks. At that time the General Manager (deceased accused No.2) had pointed out that since interest on deposit of Rs. 2 Crores previously accepted at the instance

of deceased accused No.1 from N.D.C.C. Bank and another deposit accepted from Akola Bank was more they were not profitable.

15. It is to be pointed out that deceased accused No.6 by his letter dated 29/1/2002 in the capacity of General Manager of O.D.C.C. Bank had informed N.D.C.C. Bank that as per discussions held the O.D.C.C. Bank was ready to accept a deposit of 40 Crores from N.D.C.C. Bank on interest @ 10 % p.a. Next transactions which took place within 3 – 4 days are very material. O.D.C.C. Bank and N.D.C.C. Bank have their respective current account with Apex Bank i.e. Maharashtra State Co-operative Bank, Mumbai. On 31/1/2002 N.D.C.C. Bank got debited Rs. 30 crores from their current account and credited it to the current account of the O.D.C.C. Bank.

16. Prosecution witness Sahberao Manikrao Patil was Junior Officer of O.D.C.C. Bank at the relevant time. In his statement under section 161 Cr.P.C. he stated that on 30/1/2002 accused No. 3 V.D.Malvade, Chief Accountant of O.D.C.C. Bank, had asked him to prepare list of deposits with Maharashtra State Co-operative Bank Mumbai. Accordingly, he prepared that list, collected receipts, cheques etc. at the instance of accused No.3 and both of them went to Mumbai by Car. In the guest house at Kulaba of said Maharashtra State Co-operative Bank there was accused No.1. Thereupon accused No.1, 3 and said witness Sahebrao Patil immediately went to hotel Oberai, met Subodh Bhandari i.e. accused No. 8 and other persons of Home Trade. There accused No.1 discussed with them about purchase of government securities and thereafter they all came to the Maharashtra State Co-operative Bank. Sahebrao Patil then at the instance of accused No.1 made inquiry with the bank officers. On 1/2/2002 in Mumbai accused Nos. 1, 3, witness Sahberao Patil, accused No.8 and others of Home Trade found that 30 crores of N.D.C.C. Bank were credited in the account of O.D.C.C. Bank. Thereupon there was discussion between accused Nos.1 and 3 about

the purchase of government securities. Thereafter, they have contacted accused No.4 (Deputy Chief Officer of O.D.C.C. Bank) on phone and asked him to send telephone message to the Maharashtra State Co-operative Bank for transferring aforesaid 30 crores in the account of Home Trade. Accordingly accused No.4 sent message whereupon that amount went in the account of Home Trade. That time accused Nos. 8 and others of Home Trade, accused No.1 and 3 discussed about purchase of government securities. Witness Sahebrao Patil then at the instance of accused No.1 went to the office of Home Trade at Washi for collecting receipts. The value of government securities was 29,99,34,591/-. For remaining Rs. 65409/- the Home Trade issued a cheque to O.D.C.C. Bank. That cheque was then encashed and credited in the account of O.D.C.C. Bank.

17. It further appears that since the O.D.C.C. Bank did not receive RBI receipts of government securities from Home Trade the accused No.1 was insisting on Home Trade to return the amount. Accordingly, Home Trade issued a cheque of Rs. 30,89,07,975/-for returning amount to the O.D.C.C. Bank. But that cheque was dishonored. It further appears that the Home Trade never issued government securities, it only issued contract notes.

18. It further appears that on 1/2/2002 accused No.8 got credited Rs. 29,99,99,766-67 ps from the above 30 crores received to the account of N.D.C.C. Bank. According to prosecution, Home Trade has issued a false receipt to O.D.C.C. Bank, that the Home Trade is unauthorized company dealing in government securities and that accused No.7 to 9 are its directors. Rs. 30 crores received from N.D.C.C. Bank hurriedly got transferred in the account of Home Trade who, in turn, immediately transferred to N.D.C.C. Bank and according to prosecution, this is nothing but a misappropriation of huge amount of Rs. 30 crores by the Chairman and Bank Officers of O.D.C.C.

Bank and all accused have committed criminal conspiracy for misappropriation etc.

19. It further appears that the Investigating Officer has issued notice under section 102 Cr.P.C. to freeze the said 30 crores which went in the account of N.D.C.C. Bank as it is a “stolen property” within the meaning of section 410 Cr.P.C. The N.D.C.C. Bank tried to contend that amount received from Home Trade was exclusively belongs to them as it was a sale proceed of their government securities sold by Home Trade. But this contention was not accepted by the Hon'ble Bombay High Court while disposing of N.D.C.C. Bank's Criminal Writ Petition No.3/2005, disposed of on 13/3/2013 wherein Hon'ble High Court has observed that primarily, the said amount belong to O.D.C.C. Bank which has been illegally transferred to the account of N.D.C.C. Bank. Further, it does not appear that prior to investment of 30 crores through Home Trade in government securities the O.D.C.C. Bank approved it in the meeting of Board of Directors. On 08/02/2002 a meeting of Board of Directors of O.D.C.C. Bank was held only for the purpose of discussion on the audit of 1999 to 2001 conducted by NABARD Bank as per Agenda of that meeting. The prosecution witnesses have told before Investigating Officer that in the said meeting except said subject on Agenda there was no discussion on any subject. According to prosecution, though there was discussion on the said sole subject in that meeting the accused Nos. 1 to 6 have prepared a false proceeding of meeting and it was tried to show that in the said meeting the subject of deposit of Rs. 30 crores by N.D.C.C.Bank and investment of that amount in government securities through Home Trade was discussed and the said meeting has approved it. In the proceeding of that meeting it was also written that the said subject was proposed by the director Shivaji Gadhve and another director Uttamrao Tekale supported it and finally that resolution No.2 was passed. However, the said two directors have stated before I.O. that on

08/02/2002 there was only one subject discussed in the meeting, however, their names have been shown in the proceeding for approval of said investment and it is not correct. According to prosecution, one Yashwant Parshsuram Giri, District Deputy Registrar, Co-operative Societies, Osmanabad also attended said meeting dated 8/2/2002 as a Government representative. He also stated before I.O. that in the said meeting after discussion on the inspection of NABARD was over he left the meeting.

20. Further case of prosecution is that again by writing false proceeding of the Board of Directors' meeting dated 11/3/2002 of O.D.C.C. Bank it was tried to show that the directors have approved the investment of 30 crores in the government securities through Home Trade. The resolution to that effect stated to be proposed by the director Subhash More and supported by another director Rahul Mote. But these two directors have stated before I.O. that in the meetings on 8/2/2002 and 11/3/2002 there was no subject of investment through Home Trade but their names are falsely showed in the proceeding book.

21. One Nayumkhan Pathan is Junior Officer of O.D.C.C. Bank. He stated before I.O. that the proceeding of above meeting dated 8/2/2002 was written by accused No.5 who was Chief Officer of administration of O.D.C.C. Bank, that the accused No.5 got typed that proceeding from the typist Shri. Shaikh and it was kept in the meeting of 11/3/2002 and it was approved. The approved subjects then got written by accused No.5 from said Nayumkhan who then written it in the proceeding register which was then signed by deceased accused Nos. 1 and 6. This witness also stated that he has written proceeding at the instance of accused No.5 and the alleged resolution of 11/3/2002 about investment of 30 crores.

22. Thus, according to prosecution, every accused in this case has

played important role while committing offences in question. At the relevant time the accused No.10 was Chairman of N.D.C.C. Bank. As per audit report of O.D.C.C. Bank on the basis of which present complaint was filed by Divisional Joint Registrar, Co-operative Societies, Latur, there were irregularities committed by O.D.C.C. Bank as previous sanction from competent authority was not obtained, that the bank did not verify whether Home Trade was unauthorized broker or not, that the bank was not having knowledge of members of Home Trade, no correspondence or agreement were made with Home Trade, that it was not verified whether Home Trade was a firm having RBI sanction, that the directives of RBI were not followed before making investment and RBI receipts have not been obtained from the Home Trade and thus, according to Auditor, the transaction of investment is illegal.

23. Thus having regard to the prosecution case discussed herein above there appears a prima-facie case for framing charge against all accused. Accused No.7 has not produced any document in support of contentions raised in his discharge application. At this stage the questions regarding sufficiency of evidence and its reliability are not to be seen. Accused Nos. 5, 7 and 10 have not made out a case that charge is groundless. Elaborate examination of statements recorded by I.O. is not warranted. Thus there is no merit in the discharge applications of said accused and hence liable to be rejected.

24. Before parting with the order it is made clear that the above observations are made only for the purpose of deciding discharge applications and the same should not be taken to be expressions on the merits of the case. Hence following order.

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R.C.C.No. 398/2002.
State/Pawanraje and other 9.

ORDER

Application Exh. 306, 407 and 502 stand rejected.

Sd/-7.8.2013

Date :-07/08/2013.

(C.P.Gaddam)
Chief Judicial Magistrate,
Osmanabad.