
(2017) 10 BOM CK 0137
In the Bombay High Court
Case No : 920 of 2016

Capt. Percy Meher Master

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 227](#), [Section 228](#) - Discharge - Framing of charge
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#)

Citation : (2017) 10 BOM CK 0137

Hon'ble Judges : P.N. Deshmukh

Bench : SINGLE BENCH

Advocate : Rohit Joshi, Geeta Tiwari

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsel appearing on behalf of the respective parties.

2. This petition challenges impugned judgment dated 20th October, 2016 in Criminal Revision No. 88 of 2014 passed by the learned Additional Sessions Judge, Nagpur, thereby dismissing the same filed by the petitioner against the order of learned Chief Judicial Magistrate, Nagpur passed in Regular Criminal Case No. 1847 of 2008 dated 29th January, 2014, rejecting application filed by the petitioner for his discharge of the offence registered against him vide Crime No. 376/2006 by Ambazari Police Station, Nagpur for the offence punishable under Sections 406, 409, 420, 467, 468, 471 and 472 read with Section 34 of the Indian Penal Code registered on the basis of report lodged by one Shri Khushalrao Mahadeorao Gedam.

3. Shri Rohit Joshi, learned Counsel for the petitioner submitted that the company by name, "Unique Agro Processors India Limited" (hereinafter referred as "UAPIL") was promoted by complainant Shri Khushalrao Gedam and others in

the year 1992 which was indulged in the business of extracting edible and non edible oils of which actual functioning had commenced from 1995 which due to financial constraints in the year 1997-98 has suffered huge losses and thus could not repay the loan obtained from State Finance Corporation and was then declared as sick company. In this background, it is contended that as affairs of said company were not properly handled by complainant Shri Khushalrao Gedam, within a span of two years from its commencement, company was declared as sick unit since it could not repay the loan and in this backdrop complainant had approached the petitioner requesting to bail out of this situation by investing money through one of his group companies, namely "Master Industries Private Limited" (hereinafter referred as MIPL), to which the petitioner agreed. The dues of SICOM were accordingly settled by petitioner by making payment through his company MIPL and, therefore, complainant Shri Khushalrao Gedam issued a letter in March, 2004 to release first charge of SICOM over Plant, Machinery and Assets of UAPIL in favour of MIPL

4. It is further contended that as the petitioner has invested huge amount to the extent of rupees four crores in UAPIL, he was inducted as a Director in this company. However, as further funds were required for setting up oil refinery and for working capital to revive the business, though complainant Shri Khushalrao Gedam and his associates attempted to secure loan, no financial institute was willing to extend any such assistance and in that circumstances petitioner using his good offices with the officials of Bharat Cooperative Bank Limited, Mumbai arranged loan to the extent of rupees seven crores.

5. According to the petitioner, UAPIL had current account with Federal Bank Limited at Nagpur and funds from the loan account with Bharat Cooperative Bank Limited, Mumbai were routinely transferred in the current account at Nagpur for meeting expenses of UAPIL. However, the lending bank at Mumbai raised objection to these transactions and suggested that the transaction of UAPIL should be conducted through the loan account. It is further submitted that after the loan amount was made available by petitioner, complainant along with his associates started harassing the petitioner and also siphoned huge amount of funds out of company's account for their personal use which resulted into company's plant not running to its optimum capacity, ultimately resulting into losses. In the meantime, Bharat Cooperative Bank Limited, Mumbai had started levying penal interest on the loan amount, as the consequences of which, the amount was being eroded and in that circumstances, it was decided that the loan account of UAPIL with Bharat Cooperative Bank Limited should be closed by transferring funds from the account of Federal Bank at Nagpur to Bharat Cooperative Bank Limited to clear the loan liability. It is, therefore, contended that accordingly, General Manager of UAPIL at Nagpur had issued letter dated 23.06.2005 to Federal Bank, Nagpur for transferring sum of Rs. 1.25 crores to the loan account of UAPIL with Bharat Cooperative Bank Limited. It is submitted that above stated letter was a conscious decision by the Director of UAPIL and was issued from its Nagpur office under the knowledge and control of

complainant Shri Khushalrao Gedam.

6. It is, therefore, contended that in these circumstances, on 27.06.2005, petitioner issued one cheque bearing No. 205578 against Federal Bank Limited, Nagpur for transfer of amount of Rs.81,00,000/to its loan account with Bharat Cooperative Bank Limited, Mumbai. Admittedly, both these accounts are of one and the same company i.e. UAPIL. It is the case of petitioner that though accounts with Federal Bank at Nagpur were to be operated jointly by petitioner and complainant Shri Khushalrao Gedam, above numbered cheque was issued by the petitioner under his signature only having considered to the exigencies of the situation arose at that material time and had made a request to Federal Bank to transfer above stated amount under his single signature, assuring that a signature of other signatories i.e. complainant shall be made available in due course. Accordingly, an amount of Rs.81,00,000/stood transferred from the current account of UAPIL with Federal Bank to their loan account with Bharat Cooperative Bank Limited, Mumbai. In addition to above amount, an amount of Rs.1,33,19,254/was already paid by the petitioner to close the loan account which account was thus closed on 08.07.2005.

7. It is contended that all the directors of UAPIL were aware of said transaction of clearing loan account by issuing cheque by the petitioner, as aforesaid and in this regard the Board of Directors on 31.10.2005 in its meeting has also passed a resolution to request Bharat Cooperative Bank Limited, Mumbai to return the title deed and other documents to UAPIL since the loan liability was satisfied. It is contended that passing of such resolution was in the presence of complainant Shri Khushalrao Gedam and said document is also collected by the investigating agency during the course of investigation.

8. In view of above background, it is further contended that as complainant Shri Khushalrao Gedam with the assistance of his associates was trying to sell the unit of UAPIL at Nagpur, petitioner who had invested his amount in this company, naturally opposed said move and also initiated civil proceedings by filing Civil Suit No. 107 of 2006 seeking injunction for creation of third party interest in suit property wherein the competent Court passed order to maintain status quo. It is submitted that in this background, complainant Shri Khushalrao Gedam lodged a false complaint against the petitioner alleging that amount of Rs.81,00,000/was unauthorisedly transferred by the petitioner unilaterally. On the basis of report, crime came to be registered against the petitioner for the offences, as aforesaid.

9. From the aforesaid submissions, the principal contention of Shri Rohit Joshi, learned Counsel for the petitioner is that amount of UAPIL in current account at Nagpur was transferred to its loan account at Mumbai to clear the loan liability of the same company, as both these accounts are in the name of UAPIL which admittedly is not disputed fact and as such demonstrates that by satisfying such loan liability, the petitioner has not utilized or misappropriated the amount for his personal interest. It is also not disputed that above amount was transferred to the loan account of UAPIL which fact does not appear to have been considered by

the learned Courts below who, on the other hand, have held that facts as enumerated above, can only be considered on recording the evidence. Another contention from the submissions of learned Counsel for the petitioner, which has been canvassed, is about resolution dated 31st October, 2005 vide which the directors of UAPIL had resolved that the loan liability of Bharat Cooperative Bank Limited, Mumbai was to be cleared and as such had knowledge of transfer of amount from the account of UAPIL from Nagpur to Mumbai and as such the amount in question was transferred by the petitioner for clearing of loan liability, and on payment of said amount on 29.06.2005, by transfer, said loan account was closed on 08.07.2005 on making further payment and immediately thereafter complainant issued letter to Bharat Cooperative Bank Limited, Mumbai for return of documents. All these documents are filed along with charge sheet. However, learned Courts below without considering the same, rejected the case of the petitioner for his discharge.

10. Perusal of cheque dated 27.06.2005, copy of which is on record, finds signature of petitioner in the capacity of director issued against Federal Bank and admittedly there is no signature of Chairman on the cheque though his rubber stamp is put on it which appears to be a common rubber stamp of UAPIL. This fact even otherwise has not been disputed by the petitioner, of his issuing cheque under his signature only due to the exigency which had arisen to repay the amount. Even otherwise, said amount of Rs.81,08,394/from further document on record is found transferred in the loan account with Bharat Cooperative Bank Limited, Mumbai and loan account is found to be closed after making payment. Moreover, resolution of UAPIL dated 31.10.2005 goes to establish that such a resolution was made in the presence of complainant and other directors including petitioner. Material portion of the resolution has been reproduced below :

" The Board was inform by CMD that Capt. P.M. Master, one of the Director of the company vide his letter dated 08.07.2005 already requested The Bharat Cooperative Bank (Mumbai) Ltd., Ford (Main) Branch, Ford, Mumbai - 400 001 for the release of documents executed by the Company in favour of the said Bank for the facilities availed from the Bank by the Company. Since the Company has already paid back the outstanding amounts due to the Bank and no amount is "now payable to the Bank, the above request was made for release of the documents executed by the company in favour of the above said Bank."

It was further resolved that,

"a certified true copy of this Resolution be forwarded to the Bharat Cooperative Bank (Mumbai) Ltd. as required by the said Bank and request be made to the Bank that all these important documents be sent to the Registered office of the Company on the above address."

11. In the background of above resolution and on perusal of FIR which is lodged on 22nd November, 2006 i.e. much later to resolution dated 31st October, 2006 and from the above stated document, there appears substance in the case of

petitioner that as it was decided by the Board of Directors to close down the loan account of UAPIL with Bharat Cooperative Bank Limited, Mumbai, funds in the account of Federal Bank were transferred to Bharat Cooperative Bank by issuing letter of General Manager of UAPIL, Nagpur dated 23.06.2005 for transfer of amount of Rs.1.25 crores to Federal Bank which aspect establishes fact of complainant Shri Khushalrao Gedam being aware of such decision taken by the Board of Directors for transferring funds from Federal Bank to Bharat Cooperative Bank. In view of decision, as aforesaid, it is found that the petitioner on 27.06.2005 issued cheque bearing No. 205578 valued for Rs.81,00,000/from the said account at Nagpur to Mumbai under his single signature though the account was to be operated by the joint signature with complainant Shri Khushalrao Gedam because of the fact of rising of interest in said amount and having given undertaking to the Federal Bank to get a signature of complainant subsequently. However, since it remained to sign by the complainant, almost about one year thereafter complainant had lodged report, as aforesaid which report from the basis of resolution of the company on the face of it appears to be false as on the date of lodging of report, all the authorities concerned with UAPIL including complainant Khushalrao Gedam were well aware of the fact that sum of Rs.81,00,000/was transferred, as aforesaid for clearing the loan liability and further that petitioner had invested sum of Rs.1,33,19,254/in order to close the loan account by clearing the entire liability of UAPIL and in this regard, resolution was passed on 31.10.2005 to request Bharat Cooperative Bank to return the title deed of UAPIL which document is found to be relied by the prosecution since forms part of the charge sheet. The complainant, however, one year thereafter on 22.11.2006, lodged report as aforesaid which came to be investigated and the petitioner is chargesheeted. In that view of the matter, case of prosecution, that the petitioner unauthorisedly transferred amount of Rs.81,00,000/from account of UAPIL at Federal Bank to its current account at Bharat Cooperative Bank Limited, Mumbai by using a forged rubber stamp of complainant without obtaining his signature as a Chairman of UAPIL though account was to be operated jointly, does not stand for any reason. In fact by issuing the disputed cheque as above stated, amount lying in the current account of UAPIL was transferred by the petitioner to the bank having loan account at Mumbai for effectively utilising the same for clearing the loan liability of which the Board of Directors of UAPIL were well aware, and in fact had ratified transfer of amount by its resolution dated 31.10.2005.

12. With regard to registration of crime against the petitioner under Sections 467, 468, 471 and 472 of Indian Penal Code are concerned, it is to be borne in mind that for attracting those sections, making of false document is an essential element for committing forgery. Section 464 of Indian Penal Code provides that a person is said to make false document if he makes signs, seals or executes a document dishonestly and fraudulently with an intention to create an impression that the document was signed, sealed or executed by or under authority of a person who has not signed, sealed or executed the said document or given

authority for the same. A dishonest and fraudulent intention is an essential element to make out an offence of forgery. Similarly, terms "dishonestly and fraudulently" when considered to provide that an act is done with intention causing wrongful gain or wrongful loss to any person, same is to be an dishonest act. Wrongful gain means receiving property by unlawful means, which the person receiving is not legally entitled for. Likewise, wrongful loss means loss of property by unlawful means to which the person loosing is legally entitled for. In the circumstances, when the case of petitioner along with the property involved in this petition is concerned, which is money under the cheque in question belonging to UAPIL, same is found to be utilized for clearing loan liability of UAPIL itself. In fact, the petitioner/company was legally bound to pay the debt of Bharat Cooperative Bank Limited and as such it is found that by making such payment UAPIL has only discharged its legal liability and by no stretch of imagination, it can be said that by issuing cheque, the petitioner has either forged the document or due to his act caused monetary loss or wrongful loss to UAPIL. This aspect needs more consideration in view of the fact that apart from transfer of amount of Rs.81,00,000/, petitioner has deposited further amount of Rs.1,33,19,254/to clear the loan liability. Moreover, it is no case of prosecution that the petitioner had forged the signature of ChairmancumManaging Director on the disputed cheque. The case of prosecution as is apparent from the record is that petitioner by issuing said cheque under his signature had written to the authorities of Federal Bank that signature of ChairmancumManaging Director would be obtained on the cheque later on. Said conduct of petitioner in fact further establishes that at no point of time he had misled the bank by making false or misleading statement. In that view of the matter, even provision of section 420 of Indian Penal Code cannot be attracted in the present case as under the transaction in question, amount from current account of UAPIL was transferred to its loan account and as such there is nothing to establish that the petitioner in any manner had cheated the company of which he himself was a director.

13. Insofar as Sections 406 and 409 of Indian Penal Code which are also applied in the present crime, these provisions can be said to be attracted only in case of dishonest misappropriation. In the petition in hand, admittedly, the petitioner had not received any amount under the cheque in question. In that view of the matter, there is no question of his misappropriating any amount nor it is the case of prosecution that the petitioner has converted amount under the cheque for his personal use. From the conduct of petitioner, as aforesaid, it is crystal clear that there was no dishonest intention on the part of petitioner. On the contrary, he had acted by transferring amount to clear the loan liability. In that view of the matter, no provisions of 406, 409 of Indian Penal Code are found to be attracted against the petitioner.

14. By now it is well established that under Section 227 of Code of Criminal Procedure, a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for

proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. At the stage of Sections 227-228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their fact value disclose the existence of all the ingredients constituting the alleged offence. Section 227 of the Code reads as under :

"227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

15. In the background facts involved in the petition, reference can usefully be made to the case of *Union of India .v. Prafulla Kumar Samal* (reported in 1979 (3) SCC, 4), wherein the apex Court after considering the scope of Section 227 observed that the words "no sufficient ground for proceeding against the accused" clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their fact value establish the ingredients constituting the said offence. The apex Court in para 9 and 10 of its judgment issued guidelines which are reproduced below.

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider

the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basis infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

16. From the above discussion it seems well settled that at the stage of Sections 227-228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, if taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

17. In view of facts involved in the petition and the law as aforesaid, the learned Courts below have miserably failed to appreciate the case of petitioner in its true perspective, who, for the reasons recorded, as aforesaid, is found to be entitled for order of discharge.

18. In the result, impugned order passed in Criminal Revision No. 88 of 2014 by the learned Additional Sessions Judge, Nagpur dated 20th October, 2016 and order passed below Exh.39 by the learned Chief Judicial Magistrate, Nagpur in Regular Criminal Case No. 1847 of 2008 on 29th January, 2014 are quashed and set aside. Petition is allowed. Rule is made absolute in aforesaid terms.