(2010) 10 GUJ CK 0040

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 3507 of 2009

Keshavlal Amthalal Patel APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Banking Regulation Act, 1949 — Section 35A
Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Penal Code, 1860 (IPC) — Section 114, 120B, 406, 409, 420

Citation : (2010) 10 GUJ CK 0040

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : B.S. Patel, for the Appellant; C.M. Shah, APP for Respondent 1 and Hiren M. Modi, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The Petitioner is one of the accused in Chief Case No. 17/2007 pending before learned Chief Judicial Magistrate, Mehsana which case is arising out of I-C.R. No. 122/2005. He along with other co-accused has been charge-sheeted for offences punishable under Sections 406, 409, 420, 421, 424, 467, 468, 471, 120(B) read with Section 114 of the IPC.

2. In the said FIR bearing I-CR No. 122/2005, it is alleged inter-alia that with respect to one Cooperative bank namely Sarvodaya Nagrik Sahkari Bank Ltd. (''the said bank'' for short), there was large scale fraud resulting into loss of Rs. 8,99,29,327/- which led to weak financial condition of the bank. On account of such weak financial conditions, RBI had issued directions u/s 35(A) of the Banking Regulation Act. Bank is prevented from making payment in excess of Rs. 1000/-. It is alleged that the office bearers of the bank for the period between 1988 to 2003, gave number of loans in breach of the rules and regulations ignoring the banks policies and rules. Directors of the bank thus committed large scale financial irregularities. It is further alleged that the borrowers from the very

beginning did not intend to repay the bank dues. At the time of taking loans, proper documents were not produced. They had closed down their businesses for which purpose loans were granted. Substantial amounts of loans were never returned. They had thereby cheated and defrauded the bank.

3. It is not in dispute that the Petitioner was the Director of the said bank for a substantial period when such alleged irregularities were committed. In his application seeking discharge dated 19.3.2008, he had stated that he was the Director of the bank for the period between 1995 to 2001.

4. Upon presentation of the charge-sheet, learned Magistrate took cognizance of the offence against the Petitioner and other accused at which stage the Petitioner moved application exh.6 dated 19.3.2008 and prayed that he may be discharged in exercise of powers u/s 245(2) of the Code of Criminal Procedure. In the said application, he contended inter-alia that he had not committed any fraud. From the charge-sheet papers, nothing is emerging as to how he committed the said offence. As a Director, he had never helped anyone in getting such loans.

5. This application exh.6 came to be dismissed by learned Magistrate by his impugned order dated 16.10.2008. Learned Magistrate was of the opinion that certain loans were released for construction businesses though there were directives not to grant loans for such purposes. Though previously loans were not repaid, further loans were sanctioned. Whether there were any documents fabricated or not is a matter of evidence. Inter-alia on these grounds, learned Magistrate was pleased to dismiss the application for discharge.

6. In addition to hearing the learned advocates for the parties, I have also perused the documents on record. As noted, it is not in dispute that the Petitioner was the Director of the said bank for a substantial period during which alleged large scale financial irregularities were committed. In his own application, the Petitioner has stated that he was the Director for the period between 1995 to 2001. In the charge-sheet it is stated that he was the member of the Loan Committee during the year 1992 to 1994 and thereafter, from 1997 to 2001. During his tenure, besides others, following doubtful loans were released:

1. Rajendra Construction

2. Jigarkumar Arvindbhai Parikh

3. A.B. Patel Corporation - a partnership firm

4. Durga Marketing

5. Jay Ambe Engineering

6. Haresh Cutlery Stores

7. Akash Plastic Industries

8. Rangam Steel

9. Rajendra Enterprise

10. Rajendra Granite Pvt. Ltd.

11. New Suleshwari Footwear

12. Mangalam Novelty

7. In particular, with respect to loan released in favour of M/s Rajendra Construction, in the charge-sheet it is alleged that by resolution No. 40 dated 16.3.1999, loan of Rs. 18 lakhs was sanctioned despite RBI had directed not to grant loans for construction business. Such loan was released to the same party though previously also such loan was released. Thus for the same property to the same borrower, two separate loans were sanctioned. Yet again to the same party, against the same property third loan was sanctioned in the name of Rajendra Granite Pvt. Ltd. in the year 1999 by resolution No. 39 for an amount of Rs. 10 lakhs. Large number of such instances are cited in the charge-sheet to show the involvement of the Petitioner. It is not necessary to record all of them in this order.

8. The Investigating agency has also collected certain documents to demonstrate such irregularities. For example, for the above-mentioned lending to M/s. Rajendra Construction and its concerns for the same property, in all applications the bank manager had at the relevant time put a strong objection stating that earlier loans have not been repaid. Necessary papers have not been supplied. RBI has given directives not to grant loans for business of buying and selling lands and for business of construction. Despite such numerous objections by the bank manager, the Loans Committee of which the Petitioner was a member sanctioned and cleared the loans in favour of such party. It is not in dispute that much of these amounts have not been repaid. Significantly, the guarantors for such loans were one Balkrishna Nathalal Mandivala and one Bharatkumar Bhogilal Shah. Balkrishna Nathalal was shown as a retired person earning yearly income of Rs. 40,000/-. Bharatkumar Shah was shown as employee of Rajendra and Company getting yearly income of Rs. 23,500/-. Balkrishna Nathalal had shown immovable property valued at Rs. 1,50,000/- towards security. Bharatkumar Shah could show an immovable property worth Rs. 85,000/- to offer as security. Between these two guarantors, they could convince the bank to release the loan for Rs. 10 lakhs in favour of the principal borrower. These are only some of the instances which the investigating agency had pointed out showing gross irregularities in releasing the loans worth lakhs of rupees in several cases totalling to crores of rupees worth of doubtful loans. Such loans admittedly were not repaid.

9. In the reply dated 14.12.2009, filed by Respondent No. 2 bank also, such irregularities were highlighted stating as follows:

D. I respectfully say and submit that Petitioner had deliberately ignored to perform his lawful duties and has sanctioned the loans in a very casual manner, which caused great loss to the Respondent No. 2 bank. The Petitioner as a director, has played conscious role and deliberately approved loans in respect present FIR to the following persons:

Sr. No.	Name of Borrower	Loan Amt.	Outstanding Amt.
1.	Rajendra Construction	18,00,000/-	18,10,686/- + interest since 01/12/1999
2.	Jigar Arvindbhai Parikh	5,00,000/-	1,88,379/- + interest since 01/04/2003
3.	Jay Ambe Engineering	5,00,000/-	5,94,908/- + interest since 01/12/2000
4.	Akash Plastic Industries	10,00,000/-	13,27,539/- + interest since 01/11/2001
5.	Akash Plastic Industries	8,00,000/-	6,93,545/- + interest since 01/11/2001
6.	Rangam Steel	25,00,000/-	32,95,102/- + interest since 01/02/2003
7.	Rajendra Enterprise	18,00,000/-	18,95,849/- + interest since 09/07/1999
8.	Rajendra Granite	10,00,000/-	12,43,393/- + interest since 01/02/2002
9.	New Suleshwari foot wear	1,50,000/-	1,74,714/- + interest since 01/03/2003
10.	Mangalam Novelty	1,00,000/-	20,085/- + interest since 01/03/2003
11.	A.B. Patel Corporation	25,00,000/-	32,60,166/- + interest since 01/04/2001
12.	Durga Marketing	25,00,000/-	21,10,192/- + interest since 01/02/2003

From the records of the bank most of the above loans were unsecured loans. These loans were granted without any verification and without following any procedure regarding appraisal and without obtaining enough security. The loans are granted to cover up the previous loans.

10. From the above discussion, it clearly emerges that there is ample evidence to

proceed further against the Petitioner. Whether the Petitioner will be convicted for all or any of the offences, cited in the charge-sheet is neither possible nor necessary to predict at this stage. Suffice it to say that there is sufficient evidence to proceed further against the Petitioner for his alleged involvement in the bank fraud. Exact sections with which the Petitioner should be charged can be gone into by the learned Magistrate at the time of framing the charges. This is however, not a case where entire case can be dropped against the Petitioner by ordering his discharge.

11. In the result, petition fails. Same is dismissed.