
(2012) 07 BOM CK 0187

In the Bombay High Court

Case No : Criminal Application (APL) No. 436 of 2011

Kishor Pandurang Garad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Co-operative Societies Act, 1960 — Section 73(1AB), 81(3)(4)
Penal Code, 1860 (IPC) — Section 34, 406, 408

Citation : (2012) BomCR(Cri) 589

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : A.V. Bhide, for the Appellant; S.S. Doifode, Additional Public Prosecutor for the State, for the Respondent

Judgement

Smt. Sadhana S. Jadhav, J.—Heard. Rule, returnable forthwith. With the consent of the parties, taken up for hearing.

2. This is an application u/s 482 of Cr.P.C. seeking quashing of the first information report on the basis of which Crime No. 86/2011 is registered at City Police Station, Khamgaon against 35 persons. The applicant being one of them, is seeking the relief only to his extent. His name appears as accused No. 16.

3. The applicant herein has been arraigned in the list of accused in the capacity of being the Director of Shri Gajanan Urban Credit Co-operative Society Limited, Khamgaon. It is the case of the applicant that he had never applied for the membership of the said society and, therefore, there is no possibility of his being Director of the said Society.

4. The counsel for the applicant submits that upon getting the knowledge that he has been implicated as an accused in Crime No. 86/2011 registered at City Police Station, Khamgaon, the applicant had filed an application under the Right to Information Act seeking the details of the society and the information as to whether he was a member of the society. The Manager of the society by a letter

dated 2.7.2011 (marked at Annexure-II of the application) gave the following information:-

(a). The registration number of the society is 851. There are 5896 members enrolled as the members of the society. However, the name of the present applicant does not find place in the list of members of the society.

(b). Kishor Pandurang Garad is the Director and has been inducted as a Director by a resolution dated 7.7.2006. However, there is no application filed by Kishor Pandurang Garad. No consent letter of Kishor Pandurang Garad is available. Neither there is any document to show that Kishor Pandurang Garad was nominated as the Director of the society.

(c). Kishor Pandurang Garad does not have a saving account in the said society.

(d). Kishor Pandurang Garad does not have any fixed deposit in the said society.

(e). Kishor Pandurang Garad has not obtained any loan from the society and hence there is no loan account.

(f). Kishor Pandurang Garad has never attended a single meeting of the society and had not participated in any proceedings wherein any decision touching the business of the society was taken and, therefore, the signature of Kishor Pandurang Garad does not find place in any proceedings.

5. The learned APP has in all fairness not disputed the document at Annexure-II. The learned APP has filed on record a communication of the Auditor of the Co-operative Societies dated 6.7.2011. The Auditor has communicated that the name of Kishor Pandurang Garad was incorporated in the list of Director and, therefore, a notice was issued to him. However, he had not accepted the said notice. It is further communicated that Kishor Pandurang Garad had not submitted his explanation and, therefore, he was arraigned in the list of accused by the Auditor. The said notice was issued u/s 81(3)(4) of the Maharashtra Co-operative Societies Act, 1960. The learned counsel for the applicant has relied upon the proviso to Section 73 (1AB) wherein it is specifically contemplated that

any member who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society.

Taking into consideration the mandate of the statute coupled with the fact that the applicant has never been a member of the said society, it can be safely held that the criminal proceedings pursuant to the registration of Crime No. 86/2011 registered at City Police Station, Khamgaon against the present applicant would be an abuse of process of law and that the applicant would have to undergo the ordeal of criminal proceedings initiation against him for offences punishable under Sections 406, 408 read with 34 of IPC, although he is not concerned with the said society. Hence the following order:-

The Criminal Application No. 436 of 2011 is allowed. Criminal proceedings pursuant to registration of Crime No. 86/2011 for offences punishable u/s 406, 408 read with 34 of IPC at City Police Station, Khamgaon are quashed to the extent of the present applicant. Rule made absolute in the above terms with no order as to costs.