
(2009) 07 SC CK 0046

In the Supreme Court Of India

Case No : Criminal Appeal No. 1374 of 2009 (Arising out of SLP (Criminal) No. 4129 of 2004)

M.M. Cooperative Bank Ltd.

APPELLANT

Vs

J.P. Bhimani and Another

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Constitution of India, 1950 — Article 136
Multi-State Cooperative Societies Act, 1984 — Section 15, 58(7)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 467

Citation : (2009) CriLJ 4421 : (2009) 13 JT 464 : (2009) 8 SCC 727 : (2009) 11 SCR 748

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : R.F. Nariman, Gaurav Goel, Mahesh Agarwal, Rishi Agrawala and E.C. Agrawala, for the Appellant; I.H. Syed, Huzefa Ahmadi, Varinder Kumar Sharma, Priduman, Pinky, Jesal and K. Enatoli Sema for Hemantika Wahi, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Appellant-Madhavpura Mercantile Cooperative Bank Ltd. (the bank) is a banking organisation incorporated and registered under the Maharashtra Co-operative Societies Act. It is now under a reconstruction scheme as contemplated by Section 15(b) of the Multi State Cooperative Societies Act, 1984 (for short, the '1984 Act') since repealed and replaced by the Multi State Cooperative Societies Act, 2002. The said reconstruction scheme was framed as directed by the Ministry of Agriculture, Department of Agriculture and Cooperation of the Government of India.

3. The bank at present is managed by a Board of Management constituted in terms of the said scheme. Indisputably, the Board of Directors of the bank was

superseded and an Administrator was appointed by an order dated 15.3.2001 in terms of Sub-section (7) of Section 58 of the 1984 Act. Allegedly, the Administrator, after his appointment unearthed a large scale scam and defalcation of money made by several persons including the respondents herein by committing fraud of an unprecedented scale to the tune of crores of rupees.

A criminal complaint registered as C.R.8 of 2003 was filed, inter alia, against the respondents alleging siphoning of the funds by the accused in conspiracy with each other and, thus, they are said to have committed offences punishable under Sections 406, 409, 420, 467, 471 and 120B of the Indian Penal Code. The amount involved in the aforementioned complaint is said to be Rs. 8 crores.

Respondent was arrested on 22.7.2003. He filed an application for grant of bail before the learned Sessions Judge. An affidavit was affirmed on behalf of the appellant opposing the said application wherein it was alleged that the amount involved was Rs. 60 crores and not 8 crores. It was alleged that several other complaints have also been filed against the first respondent. Before the learned Sessions Judge, an offer was made on behalf of the first respondent to make payment of some dues.

The learned Sessions Judge, however, rejected the said prayer for grant of bail, inter alia, opining that as the first respondent in association with the other accused cheated the bank and committed misappropriation, they cannot be directed to be released on bail, stating:

Due to this reason the academic future of several students was endangered, and many marriages were held-back, auspicious functions were held-up, the treatment of several persons was held-up, there were difficulties in several families. The senior citizens and widowed women were dependant on the interest from the Bank and were maintaining their families, their plain bread got snatched from them. Several families came under grave difficulties. Even at very old age several persons were compelled to start work afresh with new energies, they were subjected to such difficult times, or that those persons who could not work they become helpless and dependant. The sole cause behind all this was that the Bank Chairman, Manager, Managing Director, a handful of Officers and a handful of investors of the Madhavpura Bank for satisfying their own financial interests, conspired and misappropriated the bank funds. Due to their financial greed, and because of their acts so many people Have become paupers. In these circumstances, the cheating of large amount is done and are involved in the conspiracy of misappropriation of the bank funds, if such persons involved in such acts are released on bail then if on release on bail there would definitely be adverse on the Society.

4. The first respondent thereafter filed an application for grant of bail before the High Court. A learned Single Judge of the said Court upon taking into consideration the readiness and willingness on his part to make payment of Rs. 2384 lacs allowed the said application stating that at that stage, it was difficult to

positively infer any conspiracy with the Management considering the past transactions. It was, however, noticed:

However, it would be appropriate to note at this stage that learned advocate Mr. Lakhani, after obtaining the instructions from his client, has made a statement at the Bar that the applicant shall within a week from the date of his release deposit an amount of Rs. 50 lakhs with MNCB. He also states that an amount of Rs. 150 lakhs will be paid in monthly installments of Rs. 30 lakhs each. The first installment is to be payable on 15th April, 2004 with a grace period of 5 days. The last such installment would be payable on 15th August, 2004 with a grace period of 5 days, that is by 20th August, 2004. Mr. Lakhani also states that the mortgaged property worth Rs. 150 lakhs would be sold out by the applicant with the consent of the bank and the sale proceeds would be deposited with MNCB directly within four months from today. He also states that the applicant shall, within eight weeks from the date of his release, tender a list of freehold properties held by third parties (not being the borrowers of the bank) along with their consent and title clearance report and the bank would be free to deal with such properties in the manner bank likes for the recovery of the dues and the applicant shall extend cooperation in dealing with such properties. Mr. Lakhani stated that so far as rest of the amount nearing Rs. 805 lakhs approximately would be repaid by the applicant in minimum monthly installments of Rs. 10 lakhs after initial period of six months is over, which would commence from September, 2004. He, however, states that the applicant will also make all his endeavour to repay the banks dues as early as possible. Mr. Lakhani has stated that he has made this statement on the basis of the instructions which he has received from his client and the applicant shall file his undertaking on this line within one week from the date of his release.

A large number of conditions, however, were attached by the High Court for grant of bail in favour of the first respondent which are as under:

- (a) The applicant shall file an undertaking on the lines of the statement made by the learned advocate Mr. Lakhani before this Court within one week from the date of his release and shall abide by the said undertaking;
- (b) The applicant shall surrender his passport, if he is holding it, to the Court;
- (c) The applicant shall not influence the witnesses or tamper with any documents;
- (d) The applicant shall remain present and mark his presence at the Prevention of Economic Offences Cell, CID (Crime), Gandhinagar Zone Police Station, on every 2nd Sunday of even number English Calendar month between 9 am to 2 pm;
- (e) At the time of execution of the bonds, the applicant shall furnish his address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case or till further orders in that regards;
- (f) The applicant shall not leave the limits of India without the prior permission of

this Court;

(g) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(h) The applicant shall not do any act prejudicial to the interest of the Prosecution.

(i) The applicant shall deposit an amount of Rs. 50 lakhs with MNCB within a period of one week from the date of his release, as already stated by him.

(j) The aforesaid amounts are ordered to be deposited without prejudice to the rights of the parties and the same shall be subject to the final outcome in the Lavad Suit(s).

(k) The applicant shall abide by the above conditions scrupulously and in case of violation of any other conditions, the complainant bank would be at liberty to move this Court for cancellation of bail.

5. Mr. R.F. Nariman, learned senior counsel appearing on behalf of the appellant, would contend that the High Court committed a serious error in releasing the first respondent on bail in so far as it failed to take into consideration that as the total amount involved in the scam is huge viz. to the tune of 107 crores of rupees. It was urged that in any event, keeping in view the offer made by the appellant, he should at least be directed to pay a sum of Rs. 41 crores. Our attention, in this behalf, has been drawn to Annexure-A/1 appended to the affidavit in reply filed by the appellant bank which reads as under:

(Rs. in crores) Amount of principal dues Amount of principal dues claimed by MNCB as per affidavit

Less : (I) A/cs not pertaining to Jayesh Bhimani Group' 45.78

(a) Sahyog Chemicals 0.40

(b) Kishanlail Verma 0.70 1.10

(II) Excess amount shown in one of Group A/c. M/s Doshi Chemical Industries (13 reported instead of 10) 3.00 4.10 Correct position of Principal Dues 41.68 Total amount of principal dues 41.68 Less : Interest paid out of increased limit in various Group concerns of Bhimani Group 15.84 Amount paid after suspension of MNCB 2.00 17.84 Amount actually parted with by MNCB 23.84

6. Mr. I.H. Syed, learned Counsel appearing on behalf of respondent No. 1, on the other hand, would contend that the respondent had been granted bail after remaining behind the bar for about eight months. The present complaint, it was urged, merely involving 8 crores of rupees and in any event, even if the advances to the other concerns of the respondents are taken into consideration, the same would come to Rs. 23.84 crores, this Court, thus, should not exercise its discretionary jurisdiction in interfering with the impugned judgment,

particularly, when the respondent No. 1 had made payments in terms of the directions of the High Court.

We may at the outset notice that the High Court issued the directions on the basis of the offer made on behalf of the respondent No. 1 which reads as under:

The learned advocate Mr. Lakhani appearing for the applicant submitted that a picture is sought to be drawn by the prosecution that the applicant has been transacting the bank since 1977 and has indulged in irregular transactions from the beginning throughout the period but the fact is otherwise and he tried to demonstrate the same from the papers of the prosecution itself. Mr. Lakhani submitted that the applicant is a businessman and a regular loanee of the Bank. He has been regulating repaying the dues to the bank. Mr. Lakhani, of course, in all fairness, conceded that there appear to be some procedural lapses but, there are no intentional violations of the banking rules" at the hands of the applicant. He submitted that the charge sheet does not indicate any forgery to have been committed by the applicant. Mr. Lakhani submitted that the applicant has no criminal antecedents. The trial is likely to take time. The bank would not be benefited and consequently the depositors of the bank would not be benefited by keeping the applicant behind the bars. The interest would go on mounting. Recovery would be delayed and probably may become impossible. Mr. Lakhani submitted that the applicant is a businessman who had a reasonably large business of roughly Rs. 100 crores of rupees turn over in a year and if he is permitted to be out of jail pending the trial, he will be able to recover his dues from his debtors and in turn, pass them over to the bank. The applicant is also prepared to make repayment of reasonable amount up front and some amount by way of installments. The applicant is also prepared to sell the property mortgaged to the bank and submit the sale proceeds to the bank. He submitted that the applicant would also tender details of freehold property of third parties with their consent letters and title clearance report to the bank and put those properties at the disposal of the bank, which can be dealt with by the bank and the applicant mutually cooperates for recovery of the money. Mr. Lakhani submits that the applicant will undertake to recover the money from his debtors and repay it to the bank in a minimum of monthly deposit of Rs. 10 lakhs, after initial period of six months, as has been indicated in the affidavit, sworn by the applicant before notary and produced before the notary and produced before the trial court, which is forming part of this application as Annexure-D. Mr. Lakhani submitted that the applicant is not in any way hardened criminal. Mr. Lakhani submitted that the charge sheet relates to only one firm, namely M/s. Prabhudas Mohanlal Bhimani for an amount of Rs. 800 lakhs. The offer is being made by the applicant to take care of the firms or companies with which the applicant is concerned. As indicated in the affidavit of Deepakrai Parekh in the table in Annexure-C except item No. 9 and 10 and part of item No. 4

A further affidavit was affirmed by the respondent to the said effect.

7. We may furthermore notice that a large number of civil litigations are also

pending including the ones forming the subject matter of awards passed by the Arbitrators in different arbitrations proceedings, the details whereof are as under:

Sr. No.

Company name

Lavad Suits

Status

Arbitration Disputes

Status

Civil Application

Status

1.

Shah Bhimani Chemical Pvt. Ltd.

2568/02

Withdrawn by bank

79/03

Award Declared (18.08.06)

567/06

Pending with competent court

2.

Doshi

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208/03

Award

434/06

Pending

Chemical Industries

Declared (25.07.06)

with competent court

3.

Prabhudas Mohanlal Bhimani

Award Declared (18.08.06)

568/06

Pending with competent court

4.

Jinal Chem Pvt. Ltd.

2566/02

Withdrawn by bank

96/2005

Award Declared (9.10.06)

40/07

Pending with competent court

5.

Parin Chemicals

1695/02

Matter pending for cross examination

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6.

Shah Bhimani Petro Terminals Pvt. Ltd.

639/02

640/02

Matter pending for cross examination

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8. The impugned judgment of the High Court was passed on 9.3.2004.

Respondent No. 1, indisputably, substantively complied with the directions issued by the High Court. He had deposited a sum of Rs. 50 lakhs. He had also deposited installments of Rs. 30 lakhs each per month. The respondent No. 1 was to tender a list of properties held by third parties not being the borrowers of the bank along with their consent and support and the bank was free to deal with such properties in the manner it likes for recovery of the amount. It furthermore appears that the first respondent sold his residential house with his brother as well as his officer whereafter a deposit of Rs. 150 lakhs in addition of the amounts mentioned in para 2 and 3 of the further affidavit was made.

9. The bank, as noticed hereinbefore, had also instituted civil proceedings by filing arbitration suits for recovery of total dues against the first respondent.

10. The power of the superior courts to enlarge an accused on bail is not in dispute. The High Court while enlarging the first respondent on bail, taking into consideration the materials on record, had issued stringent conditions. It is not the case of the appellant that such conditions have been contravened by the first respondent. Even if some contraventions have been made, the same could be brought to the notice of the High Court. The fact that the first respondent has substantively complied with the directions of the High Court is also not in dispute.

11. Submissions of Mr. Nariman that the first respondent should be directed to pay at least a sum of Rs. 41 crores cannot be accepted. Subject matter of the first information report was only Rs. 8 crores. Other complaint petitions as also civil litigation are pending. In absence of any material brought on record before us to show that respondent No. 1 has not complied with the conditions imposed on him by the High Court, it is difficult to interfere with the impugned judgment. The Court, while granting bail cannot impose unreasonable conditions. {See Fida Hussain Bohra Vs. The State of Maharashtra, ; Ramathal and Others Vs. Inspector of Police and Another, ; and I. Glaskasden Grace and Others Vs. Inspector of Police and Another, }.

12. Furthermore, the impugned judgment having been passed in the year 2004, in our opinion, it is not a fit case where this Court should exercise its jurisdiction under Article 136 of the Constitution of India.

13. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.