(2012) 11 BOM CK 0021

In the Bombay High Court

Case No : Criminal Writ Petition No. 290 of 2007

Shrihari APPELLANT

Vs

Vasantrao Sambhaji Nagde and Others RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 170, 482

Citation : (2013) ALLMR(Cri) 454

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : R.V. Naiknavare holding for Mr. R.V. Ghogare, for the Appellant; S.S. Choudhari, Advocate for Respondents No. 1 to 4 and Shri D.V. Tele, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The petition is filed u/s 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India to challenge the order made by Chief Judicial Magistrate, Osmanabad delivered in M.A. No. 96/2003 and Judgment and order of Sessions Court, Osmanabad delivered in Criminal Revision No. 140/2003. The Chief Judicial Magistrate has recalled the order of investigation made u/s 156(3) of Cr.P.C. in a complaint filed by the petitioner against the respondents No. 1 to 25. The Sessions Court has dismissed the revision for want of prosecution. Both the sides are heard. Copies of relevant documents are produced in this proceeding and the record is perused by the Court. The complainant/petitioner was working as clerk in Osmanabad Janata Sahakari Bank/ Co-op Bank of Osmanabad. Accused No. 1 was the Managing Director of this Bank. Accused No. 2 was General Manager. Accused No. 3 to 15 were working as Directors. Accused No. 3 was working as Chairman. Accused No. 17 was working as Branch Manager and accused Nos. 19 to 26 were working as staff in the Bank. The complainant had made allegations that by creating false record, huge amount of Bank was mis-appropriated by the accused. The modus operandi was described by the complainant in the complaint. It is his case that on the basis of the same cheque, the amount was given on three occasions and this amount was mis-appropriated by the accused. It is his case that for recovery of misappropriated amount, deductions were illegally made from the amount which was due to the complainant and other employees. Amount of Rs. 6463/- was shown to be recovered from the complainant without taking his consent. It is his case that when he took objection to it, he was suspended and departmental inquiry was started against him. According to him, amount of more than Rs. 1,00,00,000/- (One Crore) was misappropriated by the accused.

2. The complaint was filed in May 2003. On 12/05/2003 order was made by Chief Judicial Magistrate u/s 156(3) of Cr.P.C. On 09/10/2003, on the basis of report given by the Investigating Officer, further order was made by the Chief Judicial Magistrate in the same proceeding and the order made u/s 156(3) of Cr.P.C. was called back. The Chief Judicial Magistrate has given reason that there was decision of this Court given in Writ Petitions No. 254/2002 and 2990/2000 and due to such decisions, it was not advisable to go for investigation u/s 156(3) of Cr.P.C. Though the Sessions Court dismissed revision for want of prosecution, it can be ascertained in this proceeding as to whether there was some material to proceed against the accused. Though it can be said that the proper procedure was not followed and the order like accepting the report made after investigation by police could have been made, such irregularity can be ignored if there is no material against the accused.

3. The complaint shows that there arc two specific grievances. One grievance is general in nature that the accused mis-appropriated amount of Bank by using different modus operandi like giving amount on different occasions on the basis of the same cheque and there is specific allegation that the amount of more than Rs. 6,000/- was recovered from the amount which was due to him from the Bank without taking his consent. However, this amount was credited in the account of Bank and it was recovered to make out loss sustained by the Bank due to conduct of the employees of the Bank and the conduct of the others. Copy of order made by this Court in Writ Petition No. 514/2002 is produced and it shows that this Court considered the relevant record and order made by this Court in previous proceeding like petition No. 2990/2000. Relief was claimed for initiating criminal proceeding against these persons in respect of aforesaid general allegations. It appears that this relief was not given by this Court and it is observed that it was mere irregularity and there was no criminal intention of these persons. In respect of the second grievance, the specific allegation of recovery of amount of more than Rs. 6,000/- made by complainant, it can be said that the amount was recovered by the Bank to make up loss sustained by the Bank and so no criminal intention as such can be inferred in respect of that act also. In view of these circumstances, this Court holds that it is not possible to use inherent powers at the extra ordinary jurisdiction to interfere in the order made by the Chief Judicial Magistrate. It needs to be presumed that the Chief Judicial Magistrate has accepted report of Investigating Officer that there was no

material available to file the report u/s. 170 of Cr.P.C. So, the petition stands dismissed.

