

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 3889 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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PARMANAND JAMNADAS PATEL & 6 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SP MAJMUDAR for Applicant(s) : 1 - 7.

MR KL PANDYA ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,

RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 27/02/2012

ORAL JUDGMENT

This is an application under Section 482 of

the Code of Criminal Procedure, seeking quashment of a complaint lodged by the District Registrar, Co-operative Societies, Anand in the Court of learned JMFC, Umreth being Criminal Case No.88 of 2003, alleging breach of provisions of Section 71 and Section 147 (d) of the Gujarat Co-operative Societies Act, punishable under Sections 148 of the said Act. The allegation in the complaint is that the applicants as office bearers of the Ode Urban Co-operative Bank Ltd., invested a fund of Rs.2,49,21,152/- with the Charotar Nagrik Co-operative Bank Ltd., without permission from the District Registrar, Co-operative Societies.

2. Respondent No.1-State of Gujarat and Respondent No.2 - District Registrar, Co-operative Societies, Anand are represented by learned Additional Public Prosecutor, Mr.K L Pandya.

3. Learned Advocate Mr.Majmudar for the applicants, after taking this Court through the legal provisions, has drawn attention of this Court to a communication dated 24/08/1998 addressed to the District Registrar, Co-operative Societies, seeking his permission to invest funds with the Charotar Nagrik Co-operative Bank Ltd., Anand and the Kalupur Commercial Co-operative Bank Ltd., Anand, pursuant to the Managing Committee's resolution No.16 dated 10/08/1998.

3.1 Mr.Majmudar has then drawn attention of this Court to a communication dated 18/01/1999 from the District Registrar, Co-operative Societies, addressed to the Chairman/Manager of the Ode Urban Co-operative Bank Ltd., stating that permission can be granted to make investments in the institutions enumerated in Section 71 of the Gujarat Co-operative Societies Act and, therefore, you are required to make investments in banks, institutions and trusts as stated in Section 71 of the Gujarat Co-operative Societies Act.

3.2 According to Mr.Majmudar, therefore, permission was sought and was granted by the District Registrar, Co-operative Societies for investment of funds with the Charotar Nagrik Co-operative Bank Ltd. The complaint is, therefore, not genuine and may be quashed.

4. Learned APP, Mr.Pandya has opposed this application drawing attention to Annexure -D to the application whereby by a general order, certain directions were given on investments.

5. Having examined the rival submissions, at the outset, it would be appropriate to quote relevant provisions of the Gujarat Co-operative Societies Act.

Section 71 (1) *A society may invest, or deposit its fund.--*

(f) *in any co-operative bank or in any banking company approved for this purpose by the Registrar, and on such*

conditions as the Registrar may from time to time impose.

147. Offences. - (1). *It shall be an offence under this Act, if --*

(d) *a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by section 71;*

(2) *Where an offence under this Act has been committed by a committee of a society, every person who at the time the offence was committed, was a member of such committee, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment as provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

148. Punishments for offences under section 147. - (1) *Every employer or officer, member, agent or servant of a society, or any other person, who commits an offence under section 147 shall, on conviction, be punished,--*

(d) *if it is an offence under clause (d) of that section, with fine which may extend to five hundred rupees;*

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5.1 Section 71 controls investment by Co-operative Societies, which would include the Bank also and, it provides that a society may invest or deposit its funds in several types of institutions enumerated therein which would include any Co-operative Bank as is clear from clause (f) of sub-section (1) of the said Section. All such investment in any co-operative bank or in any banking company has to be made with only those institutions which are approved for the purpose by the Registrar and on such conditions as the Registrar may from time to time impose.

5.2 Section 147 (1) (d) provides that it shall be an offence under the Act, if a committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by Section 71 and that is the allegation against the present applicants that they invested money with the Charotar Nagrik Co-operative Bank Ltd., without prior permission of the District Registrar. It is also provided in sub-section (2) of Section 147 that where such investment is made, every person who at the time the offence was committed, was a member of such committee, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, provided that, if it is shown that such members had exercised all due diligence to prevent the commission of such offence or that such offence was without his knowledge, he cannot be rendered responsible or liable for the offence.

5.3 Section 148 of the said Act provides for a punishment for offence under Section 147, and clause (d) of sub-section (1) of Section 148 provides that if an offence under Section 147 (1) is committed, the culprits may be saddled with fine which may extend to five hundred rupees.

6. Mr.Majmudar submitted that it is not a gravity of the offence which has prompted the applicants to approach this Court. It is the wrong

institution of a criminal proceedings against the applicants which has compelled the applicant to approach this Court to save their image from being tarnished.

7. With the above legal provisions in mind, if the factual aspects are seen, it is clear that the Ode Urban Co-operative Bank Ltd., had sought permission to make investments with the Charotar Nagrik Co-operative Bank Ltd., Anand and also the Kalupur Commercial Co-operative Bank Ltd., Anand by communication dated 24/08/1998 (Annexure -B) and in response thereto, by communication dated 18/01/1999 (Annexure - C) a permission was granted to make investments with institutions stated in Section 71, and Section 71 (1) (d) specifically permits investment with any co-operative Bank and, therefore, permission can be said to have been granted.

7.1 The complaint which is lodged is dated 19/02/2003 which would mean that the investment in question was made prior thereto. There is nothing on record to show that the permission granted by communication dated 18/01/1999 (Annexure - C) was subsequently withdrawn or suspended and, therefore, the complaint is founded on facts which do not constitute the offence alleged.

7.2 Mr.Pandya's relying on Annexure -D is of no virtue to the complainant for the reason that it is

dated 24/01/2006 and it cannot govern investments made prior thereto and in the instant case, as discussed herein above, the investment was made definitely prior to January, 2003.

8. In the above set of circumstances, the complaint is founded on facts which do not constitute offence alleged and therefore, it deserves to be quashed. Accordingly, complaint being Criminal Case No.88 of 2003 pending before the Court of learned JMFC, Umreth is quashed. Rule is made absolute to the aforesaid extent.

(A L DAVE, J.)

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