

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 858 of 2013

1. Avinash s/o. Dhondu Shirode,
Age : 66 years,
Occupation : Consulting Engineer,
Permanent Resident of
Umberkhed, Taluka : Chalisgaon,
District : Jalgaon,
Presently residing at
35, Shamvi, Panchavati Housing Society,
Vijay Nagar, New Adgaon Naka,
Nashik-3.
 2. Mrs. Sharmishta w/o. Avinash Shirode,
Age : 59 years,
Occupation : Household,
Permanent Resident of
Umberkhed, Taluka : Chalisgaon,
District : Jalgaon,
Presently residing at
35, Shamvi, Panchavati Housing Society,
Vijay Nagar, New Adgaon Naka,
Nashik - 3.
- .. Petitioners.

versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Chalisgaon,
Taluka : Chalisgaon,
District : Jalgaon.
2. Narayan Drupadrao Gadekar,
Age : 45 years,
Occupation : Service
(As a Special Auditor, Class-II),
To be served through the office of
Special Auditor Class-II,
Cooperative Societies,

Chalisgaon, District : Jalgaon.

3. Chalisgaon People's Cooperative Bank Ltd.,
through its Liquidator,
Chalisgaon, Taluka : Chalisgaon,
District : Jalgaon.

.. Respondents.

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Mr. N.B. Suryawanshi, Advocate, for the petitioners.

*Mr. S.G. Nandedkar, Additional Public Prosecutor, for
respondent nos.1 and 2.*

Mr. P.P. Chavan, Advocate, for respondent no.3.

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 11TH MARCH 2015

ORAL JUDGMENT (Per S.S. Shinde, J.) :

1. Heard Adv. Mr. N.B. Suryawanshi appearing for the petitioners, learned APP Mr. S.G. Nandedkar appearing for respondent nos.1 and 2, and Adv. Mr. P.P. Chavan appearing for respondent no.3.
2. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
3. This petition is filed with following prayer clause :

“ Quash and set aside the proceedings of RCC No. 123/2011 pending on the file of learned Judicial Magistrate (First Class), Chalisgaon, to the extent of the petitioners and for that purpose issue necessary orders.”

4. The learned Counsel appearing for the petitioners submits that the contents of First Information Report if read as it is, would not constitute any offence as against the petitioners. It is further submitted that the default in repayment of loan cannot be an offence by any stretch of imagination. However, perusal of First Information Report would disclose that the only allegation as against the petitioners is alleged default in repayment of amount of loan. Therefore, mere default in repayment of loan not be considered as an offence.

5. It is further submitted that the alleged irregularities stated in First Information Report cannot be considered as an offence by any stretch of imagination. Therefore, the entire proceedings, which are initiated and prosecuted by abusing the process of law deserve to be quashed. It is further submitted that the allegations in First Information Report are so improbable that no person of ordinary prudence would ever arrive at a conclusion that the petitioners have committed the alleged offence. Entire proceedings as against the petitioners are abuse of process of law. It is further submitted that as per the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in *AIR 1992 Supreme Court 604*, where the allegations

made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding further against the accused, the proceedings need to be quashed. In view of the aforesaid ratio, the proceedings in the present case deserve to be quashed at this stage itself.

6. It is further submitted that none of the contents of First Information Report *prima facie* establishes that the petitioners have committed any of the offence, nor there is any document on record to show the nexus of the petitioners, with the offence alleged.

7. The learned Counsel appearing for the petitioners further submitted that there is no legally admissible evidence on record, on the basis of which the trial can proceed against the petitioners. He further submitted that in view of the agreement entered into between the petitioners and respondent no.3 and in view of the fact that all the dues of respondent no.3 Bank have been cleared by selling his shops, no criminal liability can be attributed to the petitioners. He further submitted that there is no material on record to hold that the petitioners have committed cheating, forgery and for the purpose of cheating have misused forged documents as genuine. He further submitted that in view of the fact that one Mr. Ajitkumar Ghate has reiterated that it was he who has availed loans in the names of the petitioners and others and he has discharged that liability by repaying the loans, there is no criminal element which can be attributed to the petitioners. It is further submitted that as loan was obtained without furnishing collateral security or without complying the requisite procedure, that by itself would not culminate into criminal

offence. It is further submitted that taking into consideration the peculiar facts and circumstances and the material on record, particular the agreement and the repayment of dues, no involvement of the petitioners can be made out.

8. The learned Counsel appearing for the petitioners pressed into service exposition of the Bombay High Court in the case of ***Yashpal Nathuram Janwani & others Vs. State of Maharashtra & another***, reported in ***2013 All MR [Cri.] 3794***, and submits that the said judgment is squarely applicable in the present case inasmuch as subject matter of the dispute would fall within purview of the Maharashtra Cooperative Societies Act, 1960, and therefore remedy to the complainant is available under the said Act. The learned Counsel appearing for the petitioners submits that the entire loan amount with interest has been paid by the petitioners. Therefore, he prays that the petition may be allowed.

9. On the other hand, the learned Counsel appearing for respondent no.3, on instructions, submits that the petitioners have already paid loan amount with interest, and the respondent no.3 has no objection for quashing the proceedings as prayed by the petitioners.

10. We have given due consideration to the submissions advanced by the Counsel appearing for the petitioners, learned APP for the respondent - State, and the learned Counsel appearing for respondent no.3. With their able assistance, perused the pleadings and the grounds in the petition, annexures thereto, Judgments cited across the bar by the Counsel appearing for the petitioners and we are of the opinion that the petition

deserves to be allowed for following two reasons; *firstly*, the petitioners have paid entire loan amount with interest as contended by the learned Counsel appearing for the petitioners and said statement is not disputed by the learned Counsel appearing for the respondent no.3; and *secondly, prima facie*, it appears that the subject matter falls within purview of the Maharashtra Cooperative Societies Act, 1960. The learned Counsel appearing for the petitioners is right in contending that in somewhat similar facts situation in the case of ***Yashpal Nathuram Janwani & others (supra)***, in the facts of that case, this Court held that the matter falls within purview of the Cooperative Societies Act and filing of criminal case is nothing but abuse of process of law.

11. In view of the fact that the petitioners have paid entire loan amount with interest as stated by the learned Counsel appearing for the petitioners and said statement is not disputed by the learned Counsel appearing for respondent no.3 and further the learned Counsel appearing for respondent no.3 has no objection for quashing the proceedings, the petition deserves to be allowed.

12. In the result, the petition is allowed. Rule made absolute in terms of prayer clause “b”. The petition stands disposed of accordingly.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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