

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5541 OF 2013

1] Shrirang Baburao Chavan,
Age 50 years, Occu. Service,
R/o. Berula, Tq. Aundha,
Dist. Hingoli.

2] Rajabhau Kisanrao Gaikwad,
Age 37 years, Occu. Service,
R/o. Ukhali, Tq. Aundha,
Dist. Hingoli.

....Applicants.

Versus

1] The State of Maharashtra
Through Police Station,
Aundha Nagnath, Dist.
Hingoli.

2] Tushar Shahurao Gaikwad,
Age 31 years, Occu. Service,
R/o. Mouje Pimpale Saudagar,
Pune - 27.

....Respondents.

Mr. S.J. Salunke, Advocate for applicants.

Mr. V.D. Godbharle, APP for State/respondent No. 1.

Mr. P.S. Paranjape, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 7th April, 2015.

JUDGMENT :

1) The proceeding is filed under section 482 of Criminal Procedure Code for quashing of the F.I.R. No. 80/2013 registered in Aundha-Nagnath Police Station, Hingoli. Both the sides are

heard.

2) The crime is registered on the basis of report given by one Tushar Shahurao Gaikwad for the offences punishable under sections 420, 468, 471, 408, 34 of Indian Penal Code. He lives in Pune as he is serving in Tata Consultancy Services. During 1999 to 2013, he was receiving education in Jawaharlal Engineering College, Aurangabad. His native place is village Ukhali. He has made allegations that behind his back and by forging the record, applicant No. 2 - Rajabhau Kishanrao Gaikwad, his distant relative, opened the account in his name in Branch Ukhali of District Co-operative Bank. It is the case of complainant that present applicant No. 2 - Shrirang Chavan was working as a Branch manager in the said bank. He has contended that the cheque of Rs. 1,21,750/- in respect of cotton crop taken in his agricultural land and issued in his name was encashed in this account created by Rajabhau Gaikwad and Shrirang Chavan and this amount has been misappropriated by them. This amount had come from Government. He has contended that he had made complaint to the bank and after inquiry, report is given by concerned that account was not opened by the complainant, but some false record was probably created.

3) The police papers include the report of authority viz. Assistant Registrar, Co-operative Societies, who made inquiry and this report shows that they found that there was difference in the signatures of complainant and signatures appearing on the record used for opening account in the name of the complainant. In view of the aforesaid allegations, it can be said that there must be record to show that all the withdrawals were done by Rajabhau Gaikwad. The Branch of the bank was in village like Ukhali and so, it cannot be said that the Branch Manager did not know Rajabhau Gaikwad. This circumstance is against the Branch Manager. Further, the Branch Manager and Rajabhau Gaikwad have come together before this Court in the present proceeding. Thus, there is material to make out prima facie case for aforesaid offences.

4) The learned counsel for the applicants submitted that in the past, private complaint was filed by the complainant and in the complaint, cognizance of the offence was taken by J.M.F.C. of Aundha-Nagnath. That cognizance was taken in respect of the similar crime, but only as against Rajabhau Gaikwad. The learned counsel for applicants submitted that in view of these circumstances, it was not open to police to register

crime again on 12.10.2013. This submission is not at all acceptable. Police have statutory power to make investigation under section 156 of Cr.P.C. and when there is a report regarding cognizable offence, the crime needs to be registered. They have the power to file the case as provided under section 173 of Cr.P.C. and it cannot be said that due to the circumstance that Criminal Court has taken the cognizance of the offence, the police cannot make investigation and cannot file case. In this behalf the provision of section 210 of Cr.P.C. needs to be kept in mind which says that when there are two cases, a private case and a police case, both need to be merged together and case needs to be tried as police case. Thus, there are no merits in the present proceeding.

5) In the result, the application stands dismissed. Interim relief vacated. Rule stands discharged.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/