IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.658 OF 2016

Ravindra S/o Shankar Kamble
Age : 56 years, Occ : Service,
R/o K-102, Vijay Park,
Meera Road, Mumbai. … **PETITIONER**

VERSUS

1. The State of Maharashtra

2. Bhimrao S/o Lahuji Naik
Age : Major, Occ : Service working as
District manager, Vasantrao Naik
Vimukta Jati and Nomadic Tribe
Development Corporation, Ahmednagar.
… **RESPONDENTS**

WITH

CRIMINAL WRIT PETITION NO.885 OF 2016

Pralhad Kacharuji Gajbhiye
Age : 61 years, Occ : Retired,
R/o D-103, Rashi Apartent,
Krushna Township, Gokul Angan,
Vasai, West, Dist. Palghar.
… **PETITIONER**

VERSUS

1. The State of Maharashtra

2. Bhimrao S/o Lahuji Naik
Age : Major, Occ : Service working as
District manager, Vasantrao Naik
Vimukta Jati and Nomadic Tribe
Development Corporation, Ahmednagar.
..RESPONDENTS

CRIMINAL WRIT PETITION NO.907 OF 2016

Ganesh S/o Babasaheb Sanap
Age : 37 years, Occ : Agri.,
R/o Ganesh Niwas, Nagar Road,
Beed, Tq. & Dist. Beed. … **PETITIONER**

VERSUS

1. The State of Maharashtra

2. Bhimrao S/o Lahuji Naik
Age : Major, Occ : Service working as District manager, Vasantrao Naik Vimukta Jati and Nomadic Tribe Development Corporation, Ahmednagar.

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Advocates for Petitioners : Mr. T.M. Venjane & Mr.V.D. Gunale holding for Mr.S.G. Rudrawar
A.P.P. for Respondent/State : Mr.D.R. Kale
Advocate for Respondent No.2 : Ms. Pradyna S. Talekar holding for Talekar and Associates

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**CORAM : S.S. SHINDE &
V.K. JADHAV, JJ.**

DATE : October 1, 2016

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JUDGMENT (PER S.S. SHINDE, J)

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. Since all three Petitions are filed praying therein for quashing and setting the First Information Report/Complaint bearing C.R. No.I-137/2016 registered with Kotwali Police Station, Ahmednagar on 21st April, 2016 for the offences punishable under Sections 420, 467, 468, 34 of the Indian Penal Code, the same are being heard and disposed of by this common judgment.

3. The learned counsel appearing for the petitioner in Writ Petition No.658 of 2016 submits that petitioner – Ravindra Shankar Kamble is no way concern with the allegations in the First Information Report. He submits that the petitioner was appointed as District Manager in Vasantrao Naik Vimukta Jatis & Nomadic Tribes Development corporation Ltd., (hereinafter referred to as "the said Corporation") at Nagpur on 23rd June, 1986. By order dated 15th February,

2014, he is appointed as General Manager at Pune as Special Officer for recovery of the amount. It is submitted that even if the allegations in the F.I.R. are read in its entirety and taken at its face value, no offence is disclosed against petitioner – Ravindra. He submits that the entire control of sanctioning and disbursing the loan amount is of District Manager. Mr. Nagare was working as District Manager at the relevant time, and therefore, it was his responsibility to verify, sanction and disburse the amount to real beneficiaries. He submits that the petitioner has unblemished service record. There is procedure for disbursement of loan amount. There is committee to consider the loan proposals.

4. The F.I.R. does not constitute, prima facie, any case against the petitioner. The petitioner was neither the District

Manager or the Managing Director of the said Corporation at the relevant time. It is the routine procedure that the Project Officer, Administrative Officer and Finance Officer would scrutinize the requirement of each districts and put the proposal before the Managing Director. The Managing Director after verifying the loan proposals used to issue Demand Drafts to the concerned District Managers of various districts and the District Managers, after verifying all the documents used to disburse the loan amount in favour of the beneficiaries.

5. It is further submitted that respondent No.2 has no locus to file the complaint, since he is Junior Officer of the complainant. The learned counsel invites our attention to the pleadings in the Petitions, grounds taken therein, the annexures thereto and submits that the Petitions deserve to be allowed.

6. The learned counsel appearing for petitioner – Pralhad Kacharuji Gajbhiye in Criminal Writ Petition no. 885 of 2016 submits that the petitioner was appointed in the year 1986 in the said Corporation. The procedure is laid down for considering the loan proposals, processing the same and actual disbursement of the amount in favour of the borrowers/beneficiaries. He invites our attention to the pleadings in the Petition, grounds taken therein and annexures thereto, and submits that the petitioner stood retired from the employment of the said Corporation, and thereafter the F.I.R. is registered against him and others. Even if the entire allegations in the F.I.R. are taken as it is and read in its entirety, no offence is disclosed as against the petitioner. Therefore, he submits that the Petition may be allowed.

7. The learned A.P.P., relying upon the investigation papers and the replies filed by the authorities, submits that the statements of the witnesses have been recorded. They have named the present petitioners. Overt acts are attributed to them. The extract from the bank account of Shri Sanap is also collected. There is a financial scam. The accused conspired with each other and indulged in defrauding the State exchequer by preparing forged documents and showing disbursement of loan to fictitious beneficiaries. It is submitted that the Investigating Officer has collected the sufficient material. The involvement of the petitioners in the alleged offence has been stated by the witnesses. The investigation is in progress. The learned A.P.P., relying upon the affidavit of Vijay Shankarrao Tikole submits that, the F.I.R. was filed by one

Officer of the said Corporation alleging that the petitioner- Ravindra was working as General Manager at Pune and the certain duties were caste upon him as per the bye-laws of the Corporation. It is revealed that 50 proposals in respect of granting and sanctioning the loan by the Corporation found false, bogus and fabricated. Therefore, an inquiry was initiated by the Corporation, and one of the retired District Judge has conducted the said inquiry, wherein he came to the conclusion that the petitioner – Ravindra along with other co-accused have committed serious offences and they have misappropriated the amount showing false and bogus proposals and grabbed the amount. During the inquiry by the Officer of Corporation certain statements were recorded, wherein those officers have stated that the present petitioner has forced them to sanction the proposal and to assist one of the co-accused, who is private person Mr.Ganesh Sanap, to whom cheques have been handed over as per the directions of petitioner – Ravindra. It is submitted that during the course of investigation, the Investigating Officer has collected the proposals from the Corporation and verified, whether those persons to whom the amount is sanctioned are residing at the given addresses, and found that the documents submitted by them are not genuine one. The Investigating Officer also verified their addresses from the concerned Gram Panchayat as well, Talathi of villages, who said to have given information stating that those persons in whose names proposals are prepared are not from the said places. During the inquiry, it is also transpired that co-accused Yogesh Sanap has deposited the cheque in his own account in Beed Central Cooperative Bank and has withdrawn the amount. It was the duty of petitioner – Ravindra to verify and properly check all those loan proposals and sent it to the Managing Director. The petitioner was superior officer of the District Officer and it is his duty to verify and properly check all the proposals submitted by the District Manager. During the inquiry it was found that a charge of Ahmednagar District was also given to petitioner - Ravindra, as General Manager. It is, prima facie, found that there is involvement of all the petitioners. One co-accused Ashok Nagare, who is the District Manager was on visiting terms with the petitioner, and he used to meet Ravindra. The inquiry conducted by the Corporation revealed that petitioner – Ravindra has told to District Manager to hand over cheques to Ganesh Sanap, who is not employee/officer of the Corporation. The learned A.P.P. further submits that upon reading allegations in the

F.I.R. and the documents collected by the prosecution agency, prima facie it is clear that all the petitioners have conspired with each other and have indulged in commission of offences. Therefore, the learned A.P.P. relying upon the investigation papers and replies filed by the Officers submits that the Petitions for quashing the F.I.R. may not be entertained.

8. The learned counsel appearing for Respondent No.2, relying upon the reply filed by the said Respondent, submits that Ravindra Shankar Kamble was holding the charge as General Manager of the said Corporation at Pune at the relevant point of time i.e. at the time of alleged misappropriation of Rs.2,50,00,000/- in the name of 50 fictitious beneficiaries. It was his duty to scrutinize and sanction the proposal of the loan to the persons belonging to Vimukta Jati and Nomadic

Tribes, which is evident from the letter issued by the Managing Director of the Corporation at Mumbai wherein the specific roles and functions of the General manager are given. The learned counsel invites our attention to the document showing the role and functions of the General Manager. She submits that the present petitioner is very much involved in the commission of the alleged misappropriation of Rs.2,50,00,000/- in the name of bogus beneficiaries and on the same count he came to be suspended vide orders dated 18th May, 2015 and 27th October, 2015 issued by the Managing Director of the Corporation at Mumbai.

9. One Bhimrao Lahuji Naik, working with Vasantrao Naik Vimukta Jati and Nomadic Tribe Development Corporation, Ahmednagar has also filed affidavit. In his affidavit he has stated that the witnesses voluntarily

informed that they had disclosed everything, that had transpired during the relevant period, including the links between Shri A.V. Nagare and Shri Ravindra Kamble and also the roles played by Ravindra Kamble in the entire episode of siphoning off the funds of the Corporation. The witnesses volunteer to give the version of their statements, as recorded by the Investigating Officer. The Managing Director personally met the Superintendent of Police, Ahmednagar and requested to cause investigation through another Investigating Officer, since the Investigating Officer is not investigating the crime properly. Therefore, relying upon the reply filed by Respondent No.2, the learned counsel appearing for Respondent No.2 submits that the Petitions deserve to be dismissed.

10. We have considered the submissions of the learned counsel appearing for the

respective petitioners, the learned A.P.P. appearing for the Respondent/State and the learned counsel appearing for Respondent No.2. With their able assistance, we have perused the pleadings in the Petitions, grounds taken therein, annexures thereto, the investigation papers which were made available for perusal of this Court by the learned A.P.P. and also the enquiry report by the Officer of the Corporation.

11. Upon careful perusal of the said Enquiry Report, it is revealed by the Corporation that during the period from 15^{th} September, 2012 to 10^{th} January, 2013 in Ahmednagar district, the loan amount of Rs.2,50,00,000/- is shown to have been disbursed to 50 fictitious beneficiaries and the same was credited to the Savings account in Beed District Co-operative Bank of one co-accused namely Yogesh Sanap. The Government

officers from the Co-operative Department namely the Registrar of the Co-operative Societies directed an enquiry. The Divisional Joint Registrar prepared the Report of enquiry. There was preliminary enquiry by the Law Officer of the Corporation. On the basis of that report, the F.I.R. came to be lodged by B.L. Naik, District Manager of the Corporation with Kotwali Police Station, Ahmedangar. It appears that the amount of Rs.2.50 crores disbursed in favour of 50 fictitious beneficiaries was credited to the bank account of Yogesh Sanap with the Beed District Central Co-operative Bank, Beed where he is serving as Manager. It is clearly observed in the said report that the fraud was played on the corporation and State public exchequer with the help of Officers i.e. petitioners and others as well as brother of Yogesh Sanap i.e. Ganesh Sanap. The petitioners and also other Officers were having cordial relations with each other.

12. Upon reading the allegations in the F.I.R., it contains averment that the accused persons had entrusted 50 cheques to the co-accused Ganesh Sanap, who is not even employee of the Corporation and said Ganesh, in turn, had handed over the same to his brother Yogesh Sanap, which ultimately resulted in depositing said amount in the account of Yogesh Sanap. Upon reading the allegations in the F.I.R., in its entirety there are allegations which would attract ingredients of offences of conspiracy. It is common knowledge that normally conspiracy are hatched in secrecy. Therefore, investigation is necessary. From the documents collected during investigation, it is seen that petitioner – Ganesh Sanap is virtually acting as an agent for submitting the proposals for obtaining the benefit of beneficial scheme

implemented by the State Government for upliftment of the persons of Vimukta Jatis and Nomadic Tribes. The witnesses stated that Mr. Nagare, the then District Manager used to go out of the office frequently and was bringing proposals of loan after receiving telephone calls from the main accused. The statement of witnesses show that petitioner – Ravindra used to call the co-accused Nagare repeatedly, who in turn used to go to Pune to meet petitioner – Ravindra time and again. The statements of witnesses also show that co-accused Ganesh used to visit the office of the Managing Director and was spending time with co-accused Gajbhiye, the then Managing Director of Corporation. There cannot be any direct evidence of conspiracy as the same reflect mental state. It prima facie appears from the statements of the witnesses that all the accused were in touch with each other. The financial scam of this magnitude is impossible without aid and actual support of the high ranking officers of the Corporation. So also the beneficiaries are from Ahmednagar district, to deal with the beneficiaries which are in Ahmednagar district, the office of the Corporation is also situated at Ahmednagar. Instead of disbursing the amount directly to the beneficiaries, the amount is deposited in the name of Mr. Sanap at Beed.

13. In the light of discussion hereinabove and since the investigation is in progress and yet police have to file the charge-sheet, the contention of the petitioners cannot be accepted that no offence is disclosed against them and they have no role to play in commission of the alleged offence against them. The Supreme Court in the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation**[1] in para 17

1 2013 All SCR 2184

of that judgment held thus :-

> “17. ....
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> 5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eyue on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with an permissive eye unmindful of the damage done to the national economy and national interest.”

14. The Supreme Court in the case of **Bhaskar Lal Sharma and another V/s Monica and**

others[2] in para 11 of the judgment has held that the facts, as alleged, in the complaint will have to be proved which can be done only in the course of a regular trial. The appreciation, in a summary manner, of the averments made in a complaint petition or F.I.R. would not be permissible at the stage of quashing of F.I.R. and the facts stated will have to be accepted as they appear on the very face of it.

15. In the light of discussion hereinabove, keeping in view the allegations in the F.I.R. and more particularly, the accused conspired with each other in designing and commission of offence, and the material collected by the Investigating Officer, and the manner in which the crime is committed, we are of the opinion that the prayer of the petitioners deserves no

2 (2014) 3 SCC 383

consideration. Therefore, all the Criminal Writ Petitions stand rejected. Rule in respective Petitions stand discharged. We make it clear that observations made hereinbefore are prima facie in nature and trial Court shall not get influenced by said observations during the course of the trial and while rendering the decision.

(V.K. JADHAV, J.) **(S.S. SHINDE, J.)**

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