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

CRIMINAL APPLICATION NO.4156 OF 2016

1. Suresh s/o Dayaram Patil,
Age: 77 years, Occu: Business,
(At present The Chairman of
Aurangabad District Central
Cooperative Bank Limited,
Aurangabad)
R/o. Plot No. 25, 'Parvati',
New Samarth Nagar, Aurangabad,
Tq. & District Aurangabad
2. Rajeshwar s/o Bhimrao Kalyankar,
Age: 55 years, Occu: Service as
Managing Director of the Aurangabad
District Central Cooperative Bank
Limited, Aurangabad,
At present residing at
C/o Dinkar Prabhakarrrao Chavan,
Plot No. 67, Ramtara Housing Society,
In front of Sigma Hospital,
Shahanoorwadi, Aurangabad,
Tq. & District Aurangabad
(Permanent R/o: Village
Taroda(Khurd), Malegaon Road,
Nanded) ..APPLICANTS

VERSUS

1. The State of Maharashtra,
Through the Police Sub Inspector,
Kranti Chowk City Police Station,
Aurangabad
2. The Commissioner of Police,
Aurangabad ..RESPONDENTS

(2)

Mr R. S. Deshmukh, Advocate for applicants;
 Mr S. S. Dande, A.P.P. for respondents;
 Mr S. G. Laddha, Advocate to assist A.P.P.

WITH

CRIMINAL APPLICATION NO.4154 OF 2016

1. Anna s/o Bapurao Bhopale,
 Age: 53 years, Occu: Service,
 R/o House No. 151, Ramkrupa Colony,
 Darga Road, Shahanoorwadi,
 Aurangabad, Dist. Aurangabad
 2. Vijay s/o Uttamrao Kale,
 Age: 40 years, Occu: Service,
 R/o Kotla Colony,
 Aurangabad
- ..APPLICANTS

VERSUS

The State of Maharashtra,
 Through Police Inspector,
 Police Station, Kranti Chowk,
 Aurangabad, Dist. Aurangabad

..RESPONDENT

Mr S. S. Thombre, Advocate for applicants;
 Mr S. S. Dande, A. P. P. for respondent;
 Mr S. G. Laddha, Advocate to assist A.P.P.

WITH

CRIMINAL APPLICATION NO. 4205 OF 2016

IN

CRIMINAL APPLICATION NO. 4156 OF 2016

Sadashiv s/o Ambadas Gaike

..APPLICANT

VERSUS

Suresh Dayaram Patil & ors.

..RESPONDENTS

(3)

Mr S. G. Laddha, Advocate for applicant;
Mr R. S. Deshmukh, Advocate for respondent Nos. 1 &
2;
Mr S. S. Dande, A. P. P. for respondent No.3

CORAM : A.S. CHANDURKAR, J.

DATE : 5th DECEMBER, 2016

ORAL ORDER :

For the reasons stated in Criminal Application No. 4205 of 2016 seeking permission to assist the prosecution, the same is allowed and disposed of.

2. Since the applicants in both the applications apprehend their arrest in Crime No 0704 of 2016 registered at Kranti Chowk Police Station, Aurangabad District Aurangabad for the offences punishable under Sections 420, 465, 467, 468, 471, 406, 409 read with Section 34 and under Section 120-B of the Indian Penal Code, these applications are being decided by this common order.

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3. The complainant in Criminal Misc. Application No. 1735 of 2016 has filed private complaint against the applicants herein in which it has been stated that the applicant No.1 in Criminal Application No. 4156 of 2016 – Suresh Patil had contested the elections to the Aurangabad District Central Cooperative Bank Limited by submitting his nomination form alongwith affidavit on 7th April, 2015. Alongwith the nomination form, a no dues certificate issued and signed by the applicant No. 2 – Rajeshwar Kalyankar was annexed. The said nomination form was proposed by the applicant No. 1 in Criminal Application No. 4154 of 2016 – Anna Bhopale and seconded by the applicant No. 2 – Vijay Kale. According to the complainant, said Suresh Patil was duly elected in those elections after which he was also elected as the Chairman of the Bank. The complainant learnt that said Suresh Patil earlier was also a Chairman of late Shri. Ramchandra Patil Ginning & Pressing Society Limited which was a Co-operative Society, which had borrowed a loan from the District Central

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Cooperative Bank. On 31st March, 2014, an amount of 19,53,579.18 was outstanding at the instance of said society. The Bank had filed a Dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (for short the 'said Act') against said Suresh Patil and others for recovery of an amount of Rs.11 lakhs. According to the complainant, though said Suresh Patil was aware that he was in arrears of the amounts payable to the District Central Cooperative Bank, incorrect and false information was stated in the nomination form and the said elections were contested. On that basis, the complainant filed a private complaint and made a request to register the F.I.R. by issuing directions under Section 156(3) of the Code of Criminal Procedure. Pursuant to this complaint on 16th July, 2016, the learned Judicial Magistrate First Class issued directions under Section 156(3) of the Code of Criminal Procedure, pursuant to which the aforesaid crime came to be registered on 18th July, 2016. In this background, the applicants have approached this Court seeking protection.

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4. Shri. R. S. Deshmukh, learned Counsel for the applicants in Criminal Application No. 4156 of 2016 submitted that the present proceedings had been filed merely on account of rivalry between the complainant and applicant No. 1. He submitted that the applicant No. 1 was not in any arrears whatsoever and had submitted his nomination form with all the correct information. According to him, the District Central cooperative Bank had duly issued a no dues certificate, after which the nomination form of the applicant No. 1 came to be duly accepted. It was submitted that Shri Ramchandra Patil Ginning & Pressing Cooperative Society Limited had been de-registered and its activities had come to an end. He referred to the order dated 31st March, 2011 issued by the Assistant Registrar, Cooperative Societies, Taluka Kannad, under Section 21 of the said Act. It was therefore submitted that since the said society had been de-registered and had ceased to function, there was no question of applicant No. 1 being treated as in arrears of any amount. It was then

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submitted that under the provisions of Section 73CA (1) of the said Act, there was no embargo on contesting elections and bar was only with regard to being elected. He pointed out that the complainant had also filed the proceedings under Section 73CA of the said Act before the Divisional Joint Registrar and on 25th November, 2016 the said Dispute had been rejected. Referring to the provisions of Section 148(3) of the said Act, it was submitted that in absence of any sanction being granted for initiating the present proceedings, the complaint itself was not maintainable.

It was further contended that the entire case of the complainant was based on documentary evidence and there was no question of custodial interrogation of the applicants. He referred to the order dated 28th July, 2016 granting interim protection and submitted that the applicants had regularly appeared before the Investigation Officer and co-operated with the investigation. He referred to the affidavits filed on record in that regard.

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5. Insofar as applicant No. 2 is concerned, it was submitted that the no dues certificate had been issued after due verification of the records and in a responsible manner. The issuance of such certificate on the basis of material available on record of the Bank would not amount to commission of any offence as alleged.

6. Shri. S. S. Thombre, learned Counsel for the applicants in Criminal Application No. 4154 of 2016 submitted that the applicants who were not at all concerned with the correctness or otherwise of the statements made in the nomination form. They had merely proposed and seconded the nomination of the said Suresh Patil and they had been unnecessarily implicated in the present crime.

7. Shri. S. S. Dande, learned Addl. Public Prosecutor and Shri. S. G. Laddha, learned Counsel for the complainant opposed aforesaid submissions. The learned Counsel for the complainant submitted

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that a false affidavit was given by said Suresh Patil alongwith the nomination form despite being aware of the fact that he was in arrears of the loan amount payable to the District Central Cooperative Bank Limited. It was submitted that the provision of Section 73CA(1) of the said Act preclude a defaulter from contesting elections and the said provisions were not restricted to an elected member as urged. He placed reliance upon the judgment of learned Single Judge in Jaganrao Narharrao Harne & anr. Vs. The Sub-Divisional Officer, Amravati & anr., 2009(2) ALL MR 238. He referred to the agreement between the District Central Cooperative Bank and Shri. Ramchandra Ginning & Pressing Society Limited dated 26th February, 1997 to indicate that the applicant No. 1 - Suresh Patil was jointly and severally liable to satisfy the dues of the said society. Despite being aware of this position, the applicant No. 1 had given false information in his nomination form. According to the learned Counsel even if the society in question was de-registered, the same

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would not wipe out its existing dues. The dispute under Section 91 of the said Act was filed after the elections and same would not support the case of the applicants. It was therefore submitted that the complainant in his capacity as a whistle blower had rightly filed the complaint and there was no need whatsoever of any sanction from the competent authority under Section 148 of the said Act. The applicant No.2 having signed the no dues certificate as well as the proposer and seconder were also equally responsible. It was therefore submitted that the applicants are not entitled for any protection whatsoever.

8. I have heard respective Counsel for the parties at length and perused the documents filed on record. According to the complainant, applicant No. 1 – Suresh Patil was not entitled to contest the elections to the District Central Cooperative Bank as dues of Shri. Ramchandra Ginning and Pressing Society Limited had not been repaid. Despite this position, the nomination form giving

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false information had been submitted. It is to be noted that on 5th May, 2003, the Assistant Registrar, Cooperative Societies passed a final order of liquidation under Section 102 of the said Act with regard to the aforesaid Ginning and Pressing Cooperative Society. Thereafter on 31st March, 2011, the registration of the said society came to be cancelled in terms of Section 21 of the said Act. In view of this order, it is clear that under Section 21 of the said Act, the said society ceased to exist as a corporate body and was deemed to be dissolved. The complainant on 5th April, 2016, filed the proceedings seeking disqualification of the applicant No. 1 – Suresh Patil under the provisions of Section 73CA of the said Act on the ground that said Suresh Patil was a defaulter having not paid the dues of the said society and had still contested the elections. It is stated that this application for disqualification came to be rejected on 25th November, 2016 by the Divisional Joint Registrar but according to the complainant, the said order

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has still not attained the finality. The record further indicates that the District Central Cooperative Bank has filed dispute in January 2016 under Section 91 of the said Act for recovering the amount of Rs. 11,00,000/- with interest against applicant No. 1 – Suresh Patil and others including the said Ginning and Pressing Cooperative Society. This dispute filed after the election of the applicant No.1 – Suresh Patil is still pending. It can also be seen from the record that the complainant had also initiated the proceedings for grant of sanction under Section 148(3) of the said Act for prosecuting the applicant No. 1 – Suresh Patil.

9. From the aforesaid, it can be seen that a dispute with regard to the question as to whether applicant No. 1 – Suresh Patil was a defaulter is pending before two statutory forums under the said Act and the said proceedings have not been finally decided. At present, there is no order adjudicating the applicant No.1 as defaulter. The legal effect

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of the provisions of Section 21 of the said Act is also a matter that deserves consideration.

The case against applicant No. 2 - Rajeshwar Kalyankar, who has issued no dues certificate in his capacity as Managing Director of the Bank as well as the case of other applicants, who had proposed and seconded the nomination form of applicant No. 1 - Suresh Patil stand on better footing.

10. The case of the complainant is based on documentary material which is already available on record. In this backdrop, considering the nature of dispute as raised, I find that a case has been made out for granting protection to the applicants.

11. At this stage, I do not find it necessary to go into the legal niceties of the matter as regards the provisions of the said Act and whether contesting of elections was barred or not. Hence, ratio of the decision relied upon by the learned

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Counsel for the complainant is not required to be gone into.

12. As per order dated 28th July, 2016, the applicants were directed to appear at the concerned police station from 5th to 7th August, 2016. From various affidavits filed on record by the applicants dated 9th August, 2016, 18th September, 2016, 26th September, 2016 and 25th November, 2016, it has been stated that the applicants have co-operated with the investigation and attended the concerned police station. This aspect is not in dispute. Thus, in this situation, I find no reason whatsoever to refuse protection from pre-arrest to the applicants. Instead the applicants can be directed to continue to co-operate with the investigation.

13. As a result of aforesaid discussion, the following order is passed :

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(i) In the event of arrest of any of the applicants in Crime No 0704 of 2016 registered at Kranti Chowk Police Station, Aurangabad, District Aurangabad for the offences punishable under Sections 420, 465, 467, 468, 471, 406, 409 read with Section 34 and under Section 120-B of the Indian Penal Code, they shall be released on bail on furnishing P. R. Bond of Rs. 20,000/- each, with one surety in the like amount.

(ii) Applicants shall attend the concerned police station as and when directed by the Investigating Officer.

(iii) No steps shall be taken to coerce the prosecution witnesses including the complainant.

(iv) The applicants shall continue to co-operate in the investigation.

14. It is made clear that the observations made in this order are only for deciding the

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present applications. The other proceedings filed under the provisions of the said Act shall be decided independently without being influenced by any observations made in this order.

15. Criminal Applications are allowed in the aforesaid terms.

(A.S. CHANDURKAR, J.)

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