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

CRIMINAL WRIT PETITION NO. 1322 OF 2015

1. Maruti s/o Khandu Rohakale,
Age: 50 years, Occu: Agri. & Business,
R/o. Bhalwani, Tq. Parner,
Dist. Ahmednagar

2. Chimaji s/o Khandu Rohakale,
Age: 40 years, Occu: Agri. & Business,
R/o. Bhalwani, Tq. Parner,
Dist. Ahmednagar

3. Balwant s/o Khandu Rohakale,
Age: , Occu: Agri. & Business,
R/o. Bhalwani, Tq. Parner,
Dist. Ahmednagar ..PETITIONERS

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Kotwali Police Station,
Dist. Ahmednagar ..RESPONDENT

Mr N. V. Gaware, Advocate for petitioners;
Mr R. V. Dasalkar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th April, 2016

ORAL JUDGMENT :

Heard Mr Gaware, learned Counsel appearing on behalf of the petitioners and learned Addl. Public Prosecutor on behalf of the respondent.

2. Rule. With consent of the parties, the matter is heard finally.

3. By way of present petition, the petitioners are seeking discharge from proceedings, by quashing order dated 11th September, 2015, passed by Additional Sessions Judge & Designated Court, Ahmednagar, below Exh.84, in Sessions Case No.323 of 2011, thereby refusing to discharge the petitioners.

4. The prosecution case against the petitioners is that, they were the co-brother of the Chairman of Sampada Nagari Co-operative Credit Society. It is then claimed that, without any collateral security, they have obtained loan of Rs.5 Lacs and Rs.10 Lacs, respectively, some time in 2002 and 2009. In the first information report, it is claimed that the details of amounts outstanding against them, are as under :-

Sr. No.	Name of Director/Relative	Post/Relation	Amount sanctioned	Date	Outstanding amount
1	Rohokale Maruti Khandu	Brother-in-law	500000	12/01/02	1894775
2	Rohokale Chimaji Khandu	Brother-in-law	1000000	14/04/09	1072009
3	Rohokale Balwant Khandu	Brother-in-law	1000000	14/04/09	1691241

5. The statutory auditor, namely, Deorao Baraskar had conducted audit of the said co-operative credit society and had noticed the above referred short-fall, which resulted into registration of C.R. No.I-266 of 2011 on 1st August, 2011, with police station, Kotwali, Ahmednagar, for offences punishable under sections 177, 417, 420, 465, 468, 471 and 120 (B) of the Indian Penal Code and section 3 of the Maharashtra Protection of Small Depositors Interest Act, 1999.

6. After carrying out necessary investigation, charge-sheet came to be submitted against the petitioners.

7. Before framing of the charge in the criminal case, the petitioners moved an application (Exh.84) seeking discharge, on the ground that before registration of the crime in question they had already repaid the entire loan amount outstanding against them and there was no intention whatsoever on their part to commit the crime in question. The said application came to be rejected by the learned Sessions Judge on 11th September, 2015. Thus, present writ petition for discharge.

8. Mr Gaware would submit that the co-operative credit society from which the present petitioners had taken loan had already certified that they have repaid the respective loan amounts outstanding against them much prior to lodging of the first information report. So as to substantiate his contention, learned Counsel has invited my attention to the 'no dues certificate' issued by the said society. He would then also rely upon the extracts of the loan accounts, so as to depict that the amount as is mentioned to be outstanding against the respective loan accounts of the petitioners was paid much prior to filing of the first information report.

9. Per contra, learned Addl. Public Prosecutor submits that the petitioners are brothers-in-law of the original Chairman, namely, Dnyandeo who was instrumental in sanctioning loan to them without any collateral

security. According to him, even if the amount is repaid by the petitioners, still the fact remains that the prosecution needs to be continued, as the loan was obtained by them by playing fraud on the society. He would then submit that at this stage of the matter, it is unfair to infer that there is no involvement of the petitioners in commission of the crime in question. He submits that the present petition as such be dismissed.

10. Upon perusal of the first information report lodged by statutory auditor, pursuant to the provisions of sections 82 and 83 of the Maharashtra Co-operative Societies Act, it is required to be noted that there are specific attributions against the petitioners as regards obtaining loan, their relation with the Chairman and outstanding amount as on the date of the audit. Upon perusal of no certificates which are issued by the co-operative credit society, of which the petitioners were members and had obtained loan, it could be inferred that the petitioners have already paid the entire loan amount and there is 'no dues certificate' issued in their favour by the said society. The extracts of loan accounts of the petitioners depict specific entries as regards repayment of the amount as is alleged to have been outstanding against their loan accounts, as stated in the first information report, much prior to the date of lodging of the first information report.

11. What is required to be assessed in the above referred background is whether there was any criminal intention on the part of the petitioners to commit the crime in question, particularly of defrauding or committing any

default in repayment of loan by practicing fraud on the co-operative credit society.

12. Upon perusal of the charge-sheet, but for the statement of Assistant Auditor, which is on the same line of that of complainant auditor, it appears that there is hardly any material on record which depicts involvement of the petitioners in the crime in question.

13. Apart from above, in response to a query raised by this Court as to dis-entitlement of relatives of the office bearers of getting loan from the co-operative credit society in question, nothing is brought to my notice, from which it could be inferred that the petitioners – accused have committed the crime in question.

14. In the light of above, criminal writ petition stands allowed.

Rule made absolute in terms of prayer clause (B).

(N.W. SAMBRE, J.)

amj