

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

Criminal Writ Petition No. 1337 of 2016

District : Beed

Amarsingh Shivajirao Pandit,
Age : 50 years,
Occupation : Agriculture,
R/o. 'Shiv-chhatra',
Subhash Road, Beed,
Taluka & District Beed.

.. Petitioner.

versus

The State of Maharashtra,
Through Police Inspector,
City Police Station, Beed,
Taluka & District Beed.

.. Respondent.

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Mr. N.B. Khandare, Advocate, for the petitioner.

*Mr. A.B. Girase, Public Prosecutor, for the
respondent.*

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CORAM : Z.A. HAQ, J.

DATE : 29TH NOVEMBER 2016

ORAL ORDER:

Heard Adv. Mr. N.B. Khandare for the
petitioner and the Public Prosecutor Mr. A.B. Girase
for the respondent - State of Maharashtra.

02. The petitioner (Ex-Director of Co-operative

Bank) has assailed the order passed by the Sessions Court dismissing the Revision Application and maintaining the order passed by the learned Chief Judicial Magistrate rejecting the application filed by the applicant and other co-accused under Section 239 of the Code of Criminal Procedure, 1973 praying for discharge from the prosecution for the offence under Section 406 and 420 of Indian Penal Code.

03. The prosecution is launched against the petitioner and others including 23 persons who were Directors of the Co-operative Bank for offence under Section 406 and 420 of Indian Penal Code on the accusation that the audit report of 2010 and 2011 shows misappropriation and illegalities in the transactions of the Co-operative Bank and the Board of Directors was responsible for it. It is alleged that huge amount was given as loan without following the guidelines and bye-laws and without obtaining appropriate securities.

04. The contention on behalf of the petitioner is that the Maharashtra Co-operative Societies Act, 1960 is a complete Code in itself and it provides for the mechanism for action against the erring Directors. It is further submitted that the petitioner has placed on record documentary evidence to show that the amount of loan which was given by the Co-operative Bank has been either repaid or is

being repaid in instalments regularly. The learned Advocate has argued that the complaint does not show that the ingredients necessary to constitute offence under Section 406 and 420 of Indian Penal Code exist to enable the State to prosecute the petitioner.

05. At this stage, it is required to be seen whether the complaint / first information report discloses existence of prima facie case for prosecution. The contents of complaint dated 02nd October 2013 prima facie shows that the accusations are based on Auditor's report. At the time of hearing, on query about any enquiry under Section 88 of Maharashtra Co-operative Societies Act, 1960, the learned Public Prosecutor has submitted that the enquiry under Section 88 of Maharashtra Co-operative Societies Act, 1960 is conducted and enquiry report is submitted. The learned Public Prosecutor has submitted that the report of enquiry under Section 88 of Maharashtra Co-operative Societies Act, 1960 also shows existence of prima facie material against the petitioner. It is unexplained why the report of enquiry under Section 88 of Maharashtra Co-operative Societies Act, 1960 is not produced on record by the petitioner and because of this, the submission made by the learned Public Prosecutor as above can be considered.

06. In the above facts, I do not find any

infirmary or illegality in the impugned order. The Writ Petition is dismissed. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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