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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4558 OF 2015

Dhanyakumar Mutha … Petitioner

Versus

The State of Maharashtra and anr. … Respondents

Mr.S.S. Prabhune for the petitioner.

Mrs. S.V. Sonawane, APP for the State.

CORAM: NARESH H. PATIL &
A.M. BADAR, JJ.
DATED : MARCH 16, 2016.

P.C.

1. By this petition filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, petitioner/accused in Crime No. 20 of 2015 for the offences punishable under sections 420, 409 read with 34 of Indian Penal Code and under section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 praying for quashing the said FIR.

2. Perused the petition as well as annexures thereto including the FIR

in question.

3. Learned counsel for the petitioner vehemently argued that the petitioner is not concerned with the alleged offence. According to learned counsel for the petitioner, even if the averments made in the FIR are taken into consideration as it is, then also no ingredients of the alleged offences are made out. Petitioner has no nexus whatsoever with the society in question. There is no provision in law for appointment of advisory committee or advisory board in the Maharashtra State Cooperative Societies Act. The allegations in the FIR are to the effect that being a member of the Advisory Committee to the society, the petitioner has committed the crime in question. The FIR in question came to be lodged only to take revenge.

4. As against this, learned APP appearing for the State, vehemently argued that the petitioner has canvassed and persuaded the public at large to invest their savings in Bhaichand Hirachand Raisoni Cooperative Credit Society Ltd., Jalgaon (for short “the Said society”). Not only the said informant but many others have deposited their savings in the said society on canvassing by the petitioner as well as other accused who were on the advisory board of the said society. Learned APP further argued that ultimately when the invested money of the depositors was due and when the investors approached the society for liquidating the fixed deposits, they were asked to renew the same. Therefore, according to the learned APP, as the prima facie complicity of the petitioner in the crime in question is reflected, inherent powers of the Court cannot be exercised in the case in hand.

5. It is seen from the FIR that the first informant had invested the amount of Rs.89,500/- on 3.6.2013 and further amount of Rs.39,000/- on 27.8.2014 on the basis of canvassing made by the members of the Advisory Board of the said society. Prima facie, it is seen that several small investors have deposited their hard earned savings in the said society and ultimately when they approached the said society for liquidating their fixed deposits, the amount was not refunded by the said society.

6. In the first information report, the informant has alleged that because of the canvassing made by the Advisory Board of the said society, he has deposited his amount with the said society and that the said society has fraudulently made default in repayment of the deposits. Petitioner is said to be one of the members of the advisory board. The question whether there is provision for appointment of advisory board in the Multi State Cooperative Society is not relevant at this stage. What is relevant is whether there was canvassing made by the petitioner and other members to

the public at large to invest the amount in the said society for deceiving them and whether there is fraudulent default in making the repayment of deposits of the investors. We find substance in the contention of the learned APP that this is a tip of iceberg and the said society has made huge fraudulent defaults in repayment of deposits of small investors.

7. Considering the allegations made in the FIR and as the offence in question is serious in nature reflecting financial scam affecting large number of small investors and as it is seen that the petitioner was one of the persons who had canvased the investors for depositing the amount in the said society, we do not feel that this is a fit case for exercising inherent powers of this Court in quashing and setting aside the crime in question. It hardly needs to mention that inherent powers of this Court are required to be exercised only for securing the ends of justice and for preventing abuse of process of any Court and that too sparingly and in the rarest of rare case. In the result, petition is devoid of merits and the same is dismissed.

(A.M. BADAR, J.) **(NARESH H. PATIL,J.)**