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

CRIMINAL WRIT PETITION NO. 211 OF 2017

Mr. Sanjay Sakharam Nagale,
Age : 47 years, Occu. Manager,
Karmayogi Murlidhar Khatod
Janlaxmi Gramin Bigar Sheti Sahakari
Patsanstha Maryadit, Belapur Bk.
Tq. Shrirampur, Dist. Ahmednagar,
R/o. Belapur Bk, Tq. Shrirampur,
District Ahmednagar. … Petitioner

VERSUS

1. The State of Maharashtra,
Through in-charge of city Police Station,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

2. Shri. Yogesh Ramesh Gangwal,
Age : Major, Occu. Business,
R/o. Belapur (Bk), Padegaon,
Tq. Shrirampur, District Ahmednagar. … Respondents

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Mr V. D. Sapkal, Advocate for the petitioner
Mr S. D. Ghayal, APP for respondent No. 1
Dr S. D. Tawshikar, Advocte for respondent No. 2

………….

WITH

CRIMINAL WRIT PETITION NO. 216 OF 2017

Mr. Sanjay Sakharam Nagale,
Age : 47 years, Occu. Manager,
Karmayogi Murlidhar Khatod,
Janlaxmi Gramin Bigar Sheti Sahakari
Patsanstha Maryadit, Belapur Bk.
Tq. Shrirampur, Dist. Ahmednagar,
R/o. Belapur Bk, Tq. Shrirampur,
District Ahmednagar. … Petitioner

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Tq. Shrirampur, District Ahmednagar. … Respondents

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Mr V. D. Sapkal, Advocate for the petitioner
Mr S. D. Ghayal, APP for respondent No. 1
Dr S. D. Tawshikar, Advocte for respondent No. 2

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CORAM : **S. S. SHINDE &**
A. M. DHAVALE, JJ.

RESERVED ON : 11.08.2017.
PRONOUNCED ON : 24.08.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage. Both the writ petitions involve a common question of law and fact and as such, they are being disposed of simultaneously by a common judgment.

2. The petitioner is common in both the petitions. In writ petition No. 211 of 2017, he seeks quashing of Regular Criminal Case No. 79 of 2014 filed pursuant to Crime No. MI - 401 of 2012

registered with Shrirampur City Police Station as per directions of Judicial Magistrate First Class, Shrirampur in RTC No. 266 of 2012. In Writ Petition No. 216 of 2017, there is a similar prayer in respect of quashing of proceedings of Regular Criminal Case No. 80 of 2014 filed pursuant to Crime No. MI - 400 of 2012 registered with Shrirampur City Police Station pursuant to directions u/s 156(3) of the Code of Criminal Procedure in RTC No. 267 of 2012.

3. Heard Shri. V. D. Sapkal, learned counsel for the petitioner, Mr Ghayal, learned APP for respondent/State and Shri. S. D. Tawshikar, learned counsel for respondent No. 2.

4. The facts relevant for deciding these petitions may be stated as follows:

Respondent No. 2 - Yogesh Gangwal is a member of Janlaxmi Rural Non-agricultural Cooperative Society, Belapur Bk., of which the petitioner is a Manager. He had borrowed five loans from the said society and those were not paid in time. The bank, after issuing notice dt. 13.08.2010, initiated proceedings u/s 101 of the Maharashtra Co-operative Societies Act, 1960 in Application Nos. 34 to 38 of 2010 and obtained orders from the Assistant Registrar, Cooperative Societies, Shrirampur, for recovery of the outstanding amount. Mr Anil Jagtap was appointed as Recovery Officer, who issued notices dt. 04.01.2011 and thereafter by paper publication on 16.02.2011. Respondent No. 2 in 2011 challenged the recovery certificates by filing Revision before the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik. Divisional Jt. Registrar condoned the delay and directed respondent No. 2 herein to deposit 50% of the amount and as the direction was not complied with, the revision was rejected.

5. According to the petitioner, on 24.07.2012, respondent No. 2 accepted his liability of Rs. 13,09,107/- and issued two cheques bearing No. 155407 and 155415 for the amount totaling to outstanding dues and accordingly issued letter dt. 24.07.2012. According to respondent No. 2, this letter is fabricated, his signatures were taken on blank cheques and same were misused.

6. These cheques when presented by the petitioner for encashment on 04.09.2012, were dishonoured and after following the relevant procedure, Summary Cases No. 520 of 2012 and 521 of 2012 are filed by the bank against respondent No. 2 under Section 138 of the Negotiable Instruments Act. The process was issued in both the cases. Thereafter, respondent No. 2 filed RCC No. 266 of 2012 and 267 of 2012 against the petitioner in the Court of JMFC, Shrirampur, for offences u/s 417, 420, 465, 467, 468, 469, 470 and

471 of the IPC. Respondent No. 2 herein contended that, he had paid the entire loan amount but the petitioner-bank officers continued to issue false notices to him and prepared false documents. On 01.02.2010, the petitioner represented to him that he would secure 50% exemption from payment of loan and would provide a new loan to him. The bank was in difficulty in view of audit objection and, therefore, two cheques and nine blank stamps were taken from respondent No. 2 on assurance that those would be returned to him after 2-3 months. Respondent No. 2 claimed that he was induced by the said offer and he issued two cheques bearing No. 155407 and 155415 and nine stamp papers but, on discussion with his relatives and friends, he realized his mistake and he issued notice dt. 21.04.2010 to the petitioner and General Manager for returning those cheques and documents. It was served on the petitioner on 23.04.2010 but it was not complied with. Respondent No. 2 also contended that, in Suit No. 37 of 2010 filed before the Assistant Registrar in Reply dt. 15.07.2010, he raised this defence specifically and, therefore, he would not have issued those two cheques and would not have given letter dt. 24.07.2012 to the petitioner as claimed by him. The said letter as well as cheques were forged and those were misused, got dishonoured and false prosecution u/s 138 of the Negotiable Instrument Act was lodged against him.

7. The learned JMFC issued directions u/s 156(3) of the Code of Criminal Procedure in both the matters. C.R. Nos. MI - 400 of 2012 and MI - 401 of 2012 were registered against the petitioner at Shrirampur City Police Station. After completion of investigation, the police have submitted charge-sheet in both the cases which are numbered as RCC No. 79 of 2014 and 80 of 2014.

8. The petitioner claimed that, respondent No. 2 was a borrower and defaulter and the bank initiated a legal action against him and obtained recovery orders against him. Respondent No. 2 had challenged those orders but had failed. As the dispute is of a civil nature and the continuation of this proceeding against the petitioner is abuse of process of the court. He had communicated that he had filed revisions to challenge the orders of issuance of process bearing No. 10/14 and 11/14 before the Sessions Judge, Shrirampur but his revisions came to be dismissed. The petitioner has also disclosed that respondent No. 2 had initiated dispute No. 172 of 2012 and 206 of 2012 in Cooperative Court for declaration that the cheques obtained by the petitioner from him were illegally obtained and the proceedings u/s 138 of the Negotiable Instrument Act initiated on the basis of dishonoured cheques should not be prosecuted.

9. The respondent No. 2 has also initiated another Criminal Proceedings bearing RCC No. 89 of 2016 in the court of JMFC, Shrirampur, against the petitioner, Gram Panchayat, Belapur, Gramsevak & the society. The said case was fixed by learned JMFC for verification. In the said case, learned JMFC had called report u/s 202 and had taken cognizance on 02.04.2016 for offence u/s 420, 468, 471 of the IPC. The said order is under challenge before the Sessions Court, Shrirampur in Revision No. 22/2016. Thus, the respondent No. 2 was a defaulter and when asked to repay loan amount outstanding from him has abused the process of court to harass the Manager of Society, which has obtained legal orders of recovery against him.

10. Shri. V. D. Sapkal, learned counsel for the petitioner, placed heavy reliance on the judgment in case of **Priyanka Srivastava Vs State of U.P. AIR 2015 SC 1758**. He submitted that, the orders u/s 156(3) of Cr.P.C. were passed without following the directions regarding taking of affidavit of informant/complainant. Besides, he submitted that, in the above referred case in similar facts & circumstances, it was held that the impugned order was abuse of process of the court and was quashed.

11. Shri. Dr. Tawshikar, learned counsel for respondent No. 2 and Mr. Ghayal, learned APP for the State pointed out that, the documentary material on record shows that the letter dt. 24.07.2012 purportedly signed by respondent No. 2 is fabricated so also the cheques are also fabricated and the proceedings filed u/s 138 of the Negotiable Instruments Act were initiated against the respondent No. 2 on the basis of the same. Hence, these orders under challenge are not abuse of the process of the court and the inherent powers u/s 482 of the Code of Criminal Procedure and under Article 226 & 227 of the Constitution cannot be invoked.

12. After having considered the arguments of the learned advocates, we find that, it is a disputed question of facts as to whether the letter dt. 24.07.2012 and two cheques are issued by respondent No. 2 or not. Respondent No. 2 has issued notice dt. 21.04.2010 and had stated therein that two blank cheques bearing No.155407 & 155415 were taken from respondent No. 2 by the petitioner in addition to 9 blank stamp papers. The petitioner was called upon to return those blank signed cheques & blank stamp papers. Besides, in Suit No. 37/2010 filed by Society, respondent No. 2 had filed reply dt. 15.07.2010 wherein he has specifically stated that two blank signed cheques bearing No. 155407 and 155415 were

obtained by Patsanstha from him in addition to nine blank signed stamp papers.

13. The documentary evidence on record shows that, respondent No. 2 was a defaulter and Janlaxmi Patsanstha had obtained legal recovery orders against him. The efforts of respondent No. 2 to challenge the recovery orders have failed at every stage, still respondent No. 2 was not paying the amount.

14. From the above documents, respondent No. 2 must have issued blank signed cheques bearing No. 155407 and 155415 to the bank before issuing notice dt. 21.04.2010. Those might have been obtained towards security for repayment of loan but the petitioner does not come with such a case. He claimed that, those cheques were issued by respondent No. 2 on 24.07.2012 for Rs. 6,76,512 and Rs. 6,32,595/-, respectively, for settled amount of Rs. 13,09,107/-. The contents of the letter dt. 24.07.2012 *prima facie* appear to be false. *Prima facie*, the cheques were issued much earlier and most probably letter dt. 24.07.2012 must not have been issued by respondent No. 2.

15. It is true that, when a borrower prosecutes the lender or officers of the lendee association after losing the litigation at various

places as has happened in Priyanka Srivastava's case (cited supra), the court should be cautious and should not help the borrower to abuse the process of the court. In the present case, the contention of respondent No. 2 that, no amount was due from him, *prima facie*, does not appear to be correct. But it does not mean that, inspite of notice dt. 21.04.2010 and stand taken in reply dt. 15.07.2010, the Bank Manager can misuse the two blank signed cheques obtained from respondent No. 2 and get them dishonoured and file criminal prosecution u/s 138 of the Negotiable Instrument Act against respondent No. 2. Having carefully considered the ratio laid down in the case of Priyanka Srivastava's case in paras 1, 3, 5, 16 & 17, we find that the observations made therein are totally in different set of facts and the same are not applicable to the present case. Though Society had obtained legal orders for recovery, the last attempt for implementation of those orders is not *prima facie* legal. The petitioner was Manager of the Cooperative Society and there are specific allegations against him. This is not a case of no evidence nor it is a case which can be said to be inherently improbable.

15. General principles for exercising powers u/s 482 of Cr.P.C. are laid down in case of **State of Haryana Vs Chaudhary Bhajanlal AIR 1992 SC 604**. In **Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy (2011) 12 SCC 437**, it is laid down that

while exercising powers u/s 482 of Cr.P.C., High Court should not ordinarily embark upon an inquiry whether evidence in question was reliable or not or whether on reasonable appreciation of it, accusation would not sustain. If there is no legal and acceptable evidence, powers u/s 482 could be exercised only to prevent the abuse of the court process or to meet the ends of justice. In **Amit Kapoor vs Ramesh Chander & Anr. (2012) 9 SCC 460**, the principles for quashing u/s 482 of Cr.P.C. are reiterated and it is held that quashing of charge-sheet is an exception to the rule of continuous prosecution when the offence is broadly satisfied then the court should be more inclined to permit continuation of prosecution.

16. In the light of the settled principles, we find that there is no substance in the challenge to the prosecution of the petitioner in both the petitions and these are not fit cases to invoke the powers u/s 482 of Cr.P.C. or under Articles 226 & 227 of the constitution of India. Both the petitions therefore deserve to be dismissed. Needless to state, the observation made herein above are *prima facie* in nature and confined for deciding this petition only. Hence, the following order.

ORDER

(i) Criminal Writ Petitions No. 211 of 2017 and 216 of 2017 stand dismissed.

(ii) Rule in both the petitions is discharged.

(iii) Interim orders, if any, stand vacated.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE

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