

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

CRIMINAL WRIT PETITION NO. 446 OF 2017

Mohammad Abdul Arif,
Age : 53 years, Occ : Service,
Serving as Divisional Joint Registrar,
Co-operative Societies, Mumbai,
R/o : 6th Floor, Malhotra House,
CST, Mumbai.

PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Police Inspector,
Deopur Police Station,
Tq. & Dist. Dhule.
3. Ashok S/o Shravan Patkar,
Age : 61 years, Occu : Journalist,
R/o : 17, Patkar Nagar,
Deopur, Dhule, Dist. Dhule.

RESPONDENTS

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Mr. V.D. Salunke holding for Mr.A.D. Shinde,
Advocate for for petitioner.
Mr. V.M. Kagne, APP for Respondent/State.
Mr. C.R. Deshpande, advocate for Respondent
No.3.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 19.07.2017
Pronounced on : 29.08.2017

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith
and heard finally by consent of the parties.

2. This Petition is filed with the
following prayer :-

"B. By appropriate writ, order or
direction in the like nature the
impugned FIR bearing Cr. No. 14/2017
dated 28.02.2017 registered with
Police Station, Deopur, Dhule for the
offences punishable under sections
406, 409, 417, 418, 420, 467, 468, 471
and 120-B r/w section 34 of the Indian
Penal Code and sections 3 and 4 of the
Maharashtra Protection of Interest of
Depositors (in Financial
Establishment) Act, 1999 registered
pursuant to the order dated 28th
February, 2017 passed by the learned
Additional Sessions Judge, Dhule in
Cri. M.A. No.22 of 2017 may kindly be
quashed and set aside."

3. Learned counsel appearing for the petitioner submits that, the petitioner is a Divisional Joint Registrar, Co-operative Societies and presently working at Mumbai. The petitioner was transferred as Divisional Joint Registrar, Co-operative Societies at Nashik on 23rd May, 2013. Learned counsel submits that, in pursuance to the report of the auditor i.e. the District Special Auditor Class-I, Co-operative Societies, the petitioner on 10th November, 2015 and 1st December, 2015 had directed the said Auditor to lodge the first information report against the erring Office bearers of one Dadasaheb Waman Vishnu Sinkar Nagari Sahkari Patsanstha Maryadit, Dhule. It is submitted that, despite the directions being given on 10th November, 2015 and 1st December, 2015 for taking steps to lodge the first information report, respondent no.2 issued a notice dated 21st April, 2016 addressed to the petitioner

as to why the first information report has not been lodged against the erring office bearers and also threatened to lodge the first information report against the petitioner.

4. Learned counsel submits that, the petitioner on 30th May, 2016 replied the said notice by pointing out to respondent no.2 that, the petitioner has already issued directions to the District Special Auditor Class-I to lodge the first information report against the erring office bearers, and therefore, the notice issued by respondent no.2 is totally baseless. It is submitted that, on 30th May, 2016, the petitioner came to be transferred as Divisional Joint Registrar, Co-operative Societies, Mumbai from the office of the Divisional Joint Registrar at Nashik. It is submitted that, it appears that, in pursuance to the directions

issued by the successor of the petitioner to change Special Auditor, Co-operative Societies, on 20th August, 2016 the Special Auditor has lodged a complaint against the erring office bearers. In pursuance to the complaint lodged by the Special Auditor dated 20th August, 2016, on 29th September, 2016 a F.I.R. came to be registered by Deopur Police Station, Dhule against the erring office bearers bearing Crime No. 92/2016 for the offences punishable under sections 420, 465, 466, 467, 471 and 342 of the IP Code as well as under sections 3 and 4 of the MPID Act.

5. Learned counsel appearing for the petitioner submits that, by suppressing all these facts, it appears that Respondent No.2 in the month of February, 2017 appears to have filed an application under Section 156(3) of the Code of Criminal Procedure before the Sessions Judge, Dhule seeking directions to lodge the first information

report against the erring office bearers including the petitioner, who is shown as accused no.13 in the said application. The Additional Sessions Judge without following the guidelines issued by the Hon'ble Apex Court in the case of **Priyanka Shrivastava V/s State of Uttar Pradesh**¹ have passed the order under section 156(3) of the Cr.P.C. directing to lodge first information report against the erring office bearers of the said society as well as the petitioner on 28th February, 2017. Learned counsel submits that, in pursuance to the order dated 28th February, 2017 passed by the Sessions Judge, the first information report No. 14/2017 came to be lodged on the same day i.e. on 28th February, 2017 for the offences punishable under Sections 406, 409, 417, 418, 420, 467, 468, 471, 120-B read with section 34 of the I.P. Code and sections 3 and 4 of the MPID Act.

1 (2015) 6 SCC 287

6. Learned counsel submits that, admittedly, the petitioner is a public servant within the meaning of section 161 of the Maharashtra Co-operative Societies Act, 1960, which specifically states that, all the Registrars working under the Maharashtra Co-operative Societies Act, 1960 are public servants. Learned counsel further submits that, as per the amendment, wherein proviso has been appended vide Maharashtra Amendment dated 30th August, 2016 to the provisions of Section 156(3) of the Cr. P.C., the very passing of the order under section 156(3) of the Cr.P.C. is bad in law, without there being sanction under section 197 of the Cr.P.C. as the proviso by way of Maharashtra Amendment added to section 156(3) bars taking of cognizance under section 156(3) in absence of sanction under section 197 of the Cr.P.C. In support of this contentions, learned counsel pressed into service the judgment of

the Supreme Court in the case of **Anilkumar and others V/s M.K. Ayappa**² and the judgment of Division Bench of the Bombay High Court at Principal Seat in Criminal Writ Petition No. 4765 of 2014 and other connected matters decided on 9th October, 2015), wherein the High Court has held that, in absence of sanction, either the Magistrate or the Special/Designated Judge have no jurisdiction to pass an order under section 156(3) of the Cr.P.C.

7. Learned counsel appearing for the petitioner submits that, thus the very initiation of proceedings by the Additional Sessions Judge against the petitioner under Section 156(3) of the Cr.P.C. without there being sanction itself vitiates, and therefore, the first information report No. 14/2017 also stands vitiated and is liable to be quashed and set aside, as the allegations

2 2013 AIR SCW 5570

made in the first information report relates to the act of the petitioner while discharging his duty and during the course of his official duty. Learned counsel submits that, even vague allegations are made against the petitioner in the first information report and the same does not spell out any offence or crime as the only allegation made against the petitioner in the complaint is that the petitioner has not taken timely action against the erring officers of the said society and there is no offence made out at all and therefore, from that point of view also the impugned order Cr.No. 14/2017 is liable to be quashed and set aside so far as the petitioner is concerned.

8. Learned counsel appearing for the petitioner submits that, since the facts in respect of filing of first information report by the petitioner against the erring office

bearers of the society on 29th September, 2016 suppressed by respondent no.2 while obtaining an order under section 156(3) of the Cr.P.C. itself goes to show that the complaint as well as first information report filed against the petitioner is tainted with malafides and instituted with malice and ulterior motive and so also governed by the guidelines nos. 1, 2, 6 and 7 in the case of **State of Haryana Vs. Bhajanlal**³ and more particularly, in para no.102 of the said judgment of the Hon'ble Apex Court, guideline nos. 1, 2, 6 and 7. Learned counsel appearing for the petitioner submits that, inspite of registration of first information report on 29th September, 2015 at the instance of the petitioner and his successor, the complainant has filed application under section 156(3) suppressing the fact and misused the Court process and unnecessarily harassed the

3 AIR 1992 SC 604

petitioner, hence penal action is contemplated against the complainant.

9. Learned counsel appearing for the petitioner submits that, the Special Judge, who has passed the order under section 156(3), while allowing the anticipatory bail application of the petitioner in the impugned crime itself has realized that there is no sanction obtained at the time of passing the order under section 156(3), and therefore, has granted bail to the petitioner. Learned counsel appearing for the petitioner submits that, considering the submissions and grounds in the Petition, annexures thereto and notes of arguments, the Petition may be allowed.

10. On the other hand, learned counsel appearing for respondent no.3, relying upon the averments made in the affidavit in reply, submits that, there are allegations that, the petitioner by conspiring with accused nos. 1

to 12 in the complaint, has put Pathpedhi to the financial loss. Several representations were made to the petitioner by one Shri Anil Shirude, as well as respondent no.3, but he avoided to take any action. It is submitted that, the petitioner did not act diligently. He invites our attention to the allegations in the first information report as against the petitioner and submits that, the Petition may be rejected.

11. We have carefully considered the submissions advanced by learned counsel appearing for the petitioner, learned A.P.P. appearing for the respondent/State and learned counsel appearing for respondent no.3. With their able assistance, we have perused the allegations in the first information report against the petitioner and also the investigation papers and other material placed on record.

12. At the outset, it would be relevant to mention that, the very learned Judge, who passed the order and directed the investigation against the petitioner, himself while considering the application for anticipatory bail, granted anticipatory bail on the ground that before prosecuting the petitioner, the sanction from the Competent Authority is not taken. Apart from it, the fact that the petitioner is public servant is not in dispute.

13. Upon careful perusal of the allegations made against the petitioner in the first information report, it appears that, those alleged acts attributed to him are related to the part of his official duty or in relation to discharge of his official functions. The question raised in this Petition that, before prosecuting the public servant i.e., petitioner in the present case, sanction from the Competent Authority was

necessary, is no longer *res integra* and answered by the Bombay High Court at Principal Seat in the case of **Mr. Debashish Chakrabarty and The State of Maharashtra and other in Criminal Writ Petition No.4765 of 2014 and other connected matters (decided on 9th October, 2015)**, wherein the view is taken that, if the acts or omissions attributed to the public servant are while discharging the official duties, in that case to prosecute such public servant sanction from the Competent Authority is necessary. Admittedly, in the present case, the impugned order passed to the extent of petitioner, is without considering the requirement in law, in as much as, to prosecute the petitioner, there is no valid sanction from the Competent Authority.

14. In that view of the matter, without entering into the merits of the allegations

made against the petitioner in the first information report, the F.I.R. bearing C.R. no.14 of 2017 dated 28th February, 2017 registered with Police Station Deopur, Dhule for the offences punishable under sections 406, 409, 417, 418, 420, 467, 468, 471 and 120-B read with section 34 of the Indian Penal Code and sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 registered pursuant to the order dated 28.02.2017 passed by Additional Sessions Judge, Dhule in Criminal M.A. No. 22 of 2017, deserves to be quashed and accordingly the same is quashed and set aside qua the petitioner.

15. Rule made absolute accordingly. The Petition is allowed in the above terms and the same stands disposed of.

An observations made hereinbefore
are confined to the case of the petitioner
and consequently restricted to adjudication
of present petition only.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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