IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.496 OF 2007

1. Dadasaheb Waman Vishnu Shinkar Nagari Sahakari Pat Sanstha Ltd., Dhule, having its office at near Law College, Opp. Chitale Hospital, Deopur, Dhule, Through its President/Secretary

2. Devidas s/o Waman Shinkar, Aged: 58 years, Occu: Business, R/o Kholgalli, Near Dena Bank, Dhule, Tq. & Dist. Dhule

3. Anil s/o Murlidhar Kothawade, Aged: 41 years, Occu: Business, R/o Ganpati Mandir Road, Near Devre Hospital, Dhule, Tq. & Dist. Dhule

4. Vivek s/o Dinkar Vispute, Aged: 41 years, Occu: Business, R/o Phule Colony, Subhash Chowk, Dhule, Tq. & Dist. Dhule

5. Prabhulal s/o Hari Kasodekar, Aged: 60 years, Occu: Business, R/o Garud Colony, Nakane Road, Deopur, Dhule

6. Bhika s/o Sitaram Amrutkar, Aged: 60 years, Occu: Business, R/o Opp. Dnyaneshwar Mandir, Vanjargalli, Dhule

7. Shashikant s/o Soniram Shirude, Aged: 52 years, Occu: Business, R/o Rangoli Paints, Nehru Chowk, Deopur, Dhule

8. Anil s/o Gangadhar Songire,
   Aged: 42 years, Occu: Business,
   R/o Gut No. 6, Near Bhangya Maroti,
   Dhule, Tq. & Dist. Dhule

9. Anil s/o Dattatraya Shirude,
   Aged: 40 years, Occu: Business,
   R/o Badgujar Plot, Parola Road,
   Dhule, Tq. & Dist. Dhule

10. Ananda s/o Dhondu Suryawanshi,
    Aged: 55 years, Occu: Business,
    R/o Suryodaya Colony, Subhash Road,
    Old Dhule, Tq. & Dist. Dhule,

11. Sau. Vimal w/o Devidas Suryawanshi,
    Aged: 53 years, Occu: Business,
    R/o Kholgalli, Near Dena Bank,
    Dhule, Tq.& Dist. Dhule

12. Sau. Kokila s/o Shivdas Patil,
    Aged: 52 years, Occu: Business,
    R/o Gita Nagar, Jaihind Colony,
    Deopur, Dhule

13. Rajkumar Indrasen Suryawanshi,
    Age: 58 years, Occu: Medical Practitioner,
    R/o Professor Colony, Deopur,
    Dhule

14. Arun s/o Trimbak Hude,
    Age: 50 years, Occu: Business,
    R/o Near Law College, Deopur,
    Dhule, Tq. & Dist. Dhule

15. Nitin s/o Somnath Bagad,
    Age: 38 years, Occu: Business,
    R/o Ashok Nagar, Vijay Tiles,
    Jamnagiri Road, Dhule

16. Gopal Jawantrao Mane,
    Age: 38 years, Occu: Business,
    R/o Madhavpura, Dhule,
    Tq. & Dist. Dhule ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its P.S.I., Deopur,
Police Station, Deopur,
Dhule, Dist. Dhule

2. Kamroddin Kabiroddin Shaikh,
Age: 58 years, Occu: Business,
R/o Champa Bagh, Sakri Road,
Dhule, Tq. & Dist. Dhule ..RESPONDENTS

Mr D.S. Bagul, Advocate for petitioners;
Mr A. D. Namde, Addl. Public Prosecutor for respondent No. 1;
Mr V. R. Dhorde, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 4th JANUARY, 2017

ORAL JUDGMENT :

Heard.

2. Respondent No.2 – original complainant, in Regular Criminal Case No. 566 of 2007 was a borrower of petitioner – Co-operative Credit Society i.e. Dadasaheb Waman Vishnu Shinkar Nagari Sahakari Pat Sanstha Ltd., Dhule (hereinafter shall be referred to as 'Society' for the sake of brevity) and in default was proceeded under Section 138 of the Negotiable Instruments Act for dishonour

of cheque, under Section 101 of the Maharashtra Co-operative Societies Act, 1960 for recovery of loan amount and also in Civil Court in the matter of mortgaged property dispute.

3. It is claimed by respondent No. 2 in the aforesaid criminal complaint that present petitioner Nos.2 to 16 who were directors of petitioner No.1 Society for the period from 2005-06 were found to have been committed misappropriation to the tune of Rs. 21 Crores, as the amount of loan advanced to the borrowers was not secured. The said criminal complaint was based on Audit Report submitted by the Auditor pursuant to Section 81 of the Maharashtra Co-operative Societies Act, 1960.

4. Pursuant to the said complaint initiated by respondent No.2, learned Magistrate, Dhule, on 18th August, 2007, directed the police officer to register an offence, investigate and submit report.

5. The said order of issuance of process and proceedings initiated through the complaint case, are questioned in the present proceedings.

6. Mr Bagul, learned Counsel for the petitioners strenuously urged that petitioner No.1, a Credit Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 is required to conduct itself in accordance with the provisions thereof. He would then submit that respondent No. 2 – original complainant in criminal complaint case has taken loan from petitioner No. 1 in 1996 and cheque issued towards repayment was dishonoured resulting into prosecution of respondent No.2 under Section 138 of the Negotiable Instruments Act vide S.T.C.C. No. 548-A/98, in which present respondent No. 2 was convicted. He would then submit that, on 2nd December, 1999, pursuant to the proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act, 1960, a recovery certificate is already issued against respondent No. 2 in favour of petitioner

No. 1 Society which was subject matter of revision, which was also dismissed by the revisional authority against the complainant. He would then invite my attention to the conduct of respondent No. 2 in filing the suit for partition of the mortgaged property being R.C.S. No. 400 of 2001 without impleading petitioner No. 1 as a party and obtained decree for partition from the Court, which was already upset in appeal preferred by petitioner No.1. According to him, in the aforesaid background, respondent No. 2 with an intention to twist the arms of the petitioners has initiated the above complaint case without any legal basis supporting the allegations in the complaint. He would then urge that complaint itself is not sustainable and is liable to be quashed and set aside as moved with malafide intention. According to him, allegations in the complaint are far away from truth as is apparent from the letter dated 1st June, 2007 issued by Statutory Auditor to Divisional Joint Registrar of Co-operative Societies in regard to status of alleged loan transactions which is referred in criminal complaint. He would also rely upon enquiry report placed on record, conducted by the officials from the Department of Co-operation.

7. Per contra, Mr Dhorde, learned Counsel for respondent No.2 complainant would strenuously urge that very conduct of the petitioners is required to be taken note of. According to him, complaint was based on Audit Report submitted by the Auditor and once Auditor has noticed shortfalls on the part of the petitioners, which were intentional and with criminal motive of getting the amount of the bank siphoned off, the prosecution against the petitioner is very much tenable. He would submit that the amount as was outstanding against respondent No.2 was already repaid and there is another offence being Crime No. 92 of 2016 registered against the petitioners for the offence punishable under Section 420, 465, 466, 467,471 read with Section 34 of the Indian Penal Code and Section 3-B and 4 of the Maharashtra Protection of

Interest of Depositors Act, 1999. He would then urge that all the accused persons, who are the petitioners before this Court are already facing the prosecution in the aforesaid crime and as such, their conduct in later offence also needs to be appreciated. According to him, in the above referred background, the complaint and the order of registration of crime is very much sustainable.

8. Having bestowed my thoughts to the rival submissions, what is required to be appreciated is, conviction of respondent No.2 under the provisions of Negotiable Instruments Act, is not in dispute. It is also not in dispute that Regular Civil Appeal 72 of 2003 filed by petitioner No.1 – Co-operative Society, a decree for partition in favour of respondent-complainant in Regular Civil Suit No. 400 of 2001 was already set aside. It is also not in dispute that present respondent No.2 has tried to prosecute office bearers of petitioner No.1 – Society for offence punishable under Sections 120-B, 465, 468, 469,471,477(A) read with Section 34 of

the Indian Penal Code in a private complaint case being R.C.C. No. 180 of 2000, which came to be dismissed, which order was further confirmed in revision being Criminal Revision No. 155 of 2002, by order dated 6th December, 2003. From the factual matrix as is narrated herein above, what is required to be noticed is respondent No.2 – original complainant with an intention to twist the arms of the petitioners as they have taken recourse to recovery proceedings against respondent No.2 has initiated present complaint case.

9. From the provisions of Sections 78,83 and 88 of the Maharashtra Co-operative Societies Act, 1960, what could be noticed is, if audit is conducted by Co-operative Society and if shortfalls are not overcome by the Management or office bearers, the statute provides for appropriate measures including that of measures under Section 78,83 and 88 of the Maharashtra Co-operative Societies Act, 1960. Admittedly, after statutory audit was conducted no such proceedings were

initiated against the petitioners, particularly based on the alleged defaults in Audit Report which would form to be basis for initiation of the complaint by respondent No.2. Rather there is material on record to infer that there was sufficient compliance of the audit objections on the part of the petitioners as is apparent from the certificate issued by the Chartered Accountant to that effect.

10. Apart from above, it is required to be noted that present petitioners, even if presumed to have added as accused in Crime No. 92 of 2016, it is premature to say that their conduct in 2016 as is reflected in the aforesaid crime was in continuation to the conduct as has been alleged in the complaint for consideration for the year 2005-06. The offence in question, being Crime No. 92 of 2016 based on the Audit Report of the 2011-12 and as such, same is in any case cannot be co-related with that of audit or defaults noticed in such report of the year 2005-06.

11. In view of the aforesaid background, what can be inferred is, initiation of proceedings by respondent No.2 against petitioners in the form of complaint case, are with an intention against petitioners as the petitioners persuaded the matter hard against respondent No.2 for effecting recovery of amount of loan amount.

12. Apart from above, I hardly see any material to infer that in the year 2005-06, particularly in the Audit Report, there were defaults noticed on the part of the petitioners, which gave rise to file criminal complaint. I have already dwelt upon the scheme of Maharashtra Co-operative Societies Act, particularly Sections 78, 83 and 88 which deal with the defaults of the directors in the matter of illegal advances, recovery if any etc.

13. It is worth to refer law laid down by the Supreme Court in the matter of ***Kishan Singh (D) through L.Rs. Vs Gurpal Singh and others*** reported

in ***2010(8) SCC 775***, particularly paragraph-22 thereof, which reads thus:

> "22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to

enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238; State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604; G. Sagar Suri & Anr. Vs. State of U.P. & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors., (2008) 12 SCC 531)."

14. From the above referred observations, it appears that present respondent – original complainant has tried to degenerate into a weapon of harassment and persecution, which perhaps is out of his frustration by cheaply invoking the jurisdiction of this Court, particularly in the backdrop of having lost his litigation for non payment of loan amount on all fronts.

15. Apart from above, law laid down by the Apex Court in the matter of ***State of Haryana vs Bhajan Lal,*** reported in ***1992 Supp (1) SCC 335,***

particularly paragraph-102 is worth referring to, wherein Apex Court has listed categories of cases wherein High Court would be justified in exercising in its inherent powers under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India. The said categories reads thus :

> "1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same

do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

> 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. In the wake of above observations, it could be inferred that the order of the learned trial Court issuing process in the complaint case and the proceedings initiated thereto at the behest of respondent-complainant is manifestly initiated with malafides, ultra motive for wreaking vengeance on the accused persons with a view to spite them due to private and personal grudge

17. In view of above, in my opinion, case for interference is made out. Criminal Writ Petition, as such stands allowed. Rule made absolute in terms of prayer clause (B) and (C).

(N.W. SAMBRE, J.)

Tupe