IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.546 OF 2015

Amit s/o. Thamaji Dighe,
Age: 31 years, Occu: Business,
Original R/o.Village Wadzire,
Taluka Parner, District Ahmednagar
Now residing at Alok Park, Flat No.A-6,
DKS Vishwa Road, Dhayari, Pune,
Taluka and District Pune. **APPLICANT**
[Orig.Accused No.15]

VERSUS

1. The State of Maharashtra
Through the Police Inspector,
Parner Police Station, Parner,
Taluka Parner, District Ahmednagar.

2. Dadasaheb s/o Nivrutti Gaikwad,
Age: 43 years, Occu. Service as
Certified Auditor in the office of
The Assistant Registrar, Cooperative
Societies, Parner, Taluka Parner,
District: Ahmednagar, R/o. Village
Jategaon, Taluka : Parner,
District : Ahmednagar. **NON-APPLICANTS/ RESPONDENTS**
[No.2 – original complainant]

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Mr.Rajendra Deshmukh, Advocate for the applicant
Mr.D.R.Kale, APP for the Respondent / State

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WITH
CRIMINAL APPLICATION NO.3285 OF 2015

Shivram s/o Sukhdeo Sable,
Age: 66 years, Occu: Agril.,
R/o. Walawane, Tq. Parner,
Dist. Ahmednagar. **APPLICANT**

VERSUS

1. The State of Maharashtra
Through the Police Inspector,
Parner Police Station, Tq.Parner,
Dist. Ahmednagar.

2. Dadasaheb s/o Nivrutti Gaikwad,
Age: 43 years, Occu. Service as
Certified Auditor in the office of
The Assistant Registrar, Cooperative
Societies, Parner, Taluka Parner,
District: Ahmednagar,
R/o. Village Jategaon, Tq.Parner,
Dist.Ahmednagar. **RESPONDENTS**

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Mr.Y.D.Kale, Advocate holding for Mr.R.R.Karpe, Advocate for the applicant
Mr.D.R.Kale, APP for the Respondent / State

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CORAM: S.S.SHINDE &
K.K.SONAWANE,JJ.

Reserved on : 14.03.2017
Pronounced on : 31.03.2017

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

1. Since both the Applications are filed praying relief of quashing and setting

aside the First Information Report bearing Crime No.I-206/2014, registered with Parner Police Station, Parner, District Ahmednagar, for the offences punishable under Sections 406, 467, 468, 477 r/w. 34 of the Indian Penal Code. Both these Applications are being heard and disposed off by the common judgment.

2. The learned counsel appearing for the applicant, namely Amit Thamaji Dighe, in Criminal Application No.546/2015 submits that, the applicant worked in the capacity of Cashier with Ashwamedh Gramin Bigarsheti Sahakari Patsanstha Maryadit, Wadzire, Taluka Parner, District Ahmednagar, for the period from 28th March, 2003 to 11th January, 2005. On 11th January, 2005, he submitted his resignation from the post of Cashier of the said Credit Society and the charge was handed over on the very day. The said resignation came to be accepted by the said Credit

Society on 26th February, 2005. The applicant worked in the capacity of Clerk in the said Credit Society during the period from 11th January, 2005 to 13th January, 2013 and wherefrom he resigned on 13th January, 2013 and came to be relieved on the very day. It is submitted that, non applicant no.2 audited the said credit society for the period from 1st April, 2013 to 31st March, 2014, and prior to the said period, applicant has resigned. He submits that, the application deserves to be allowed.

3. The learned counsel appearing for the applicant, namely Shivram Sukhdeo Sable, in Criminal Application No.3285/2015 submits that, in the year 2008 the applicant was member of the Managing Committee of the Ashwamedh Gramin Bigarsheti Path Sanstha, Wadzire, Taluka Parner, District Ahmednagar. The applicant resigned from the membership and tendered his resignation as Managing

Committee member on 30.12.2009. The said resignation has been accepted on 29th January, 2010, and therefore, he had nothing to do with the affairs of the said society for the financial year 2013-14.

4. On the other hand, the learned APP appearing for respondent–State in Criminal Application No.546/2015 relying upon the investigation papers submits that, there are number of documents show involvement of the applicant. He submits that, number of receipts were issued by him, not only that he has also drawn salary. It is submitted that though the Auditor made audit of the said Credit Society for the period from 1st April, 2013 to 31st March, 2014. However, he found that since the registration of the said Credit Society without adhering to the provisions of the bye-laws, contrary to the Rules, the loan amount is disturbed to the various persons and there was no effort on

the part of the other Directors or employee to recover the said loan amount. Even the earlier Auditor in collusion with the member of the Managing Committee/Board of Directors and employees have prepared record showing that the affairs of the society are running in profit. Therefore, he submits that the scope of investigation is not restricted only to particular financial year, but even for the earlier period. He invites our attention to the affidavit filed by the applicant and submits that by way of filing such affidavit, applicant has assured that he will be responsible for the decision, which will be taken for the period from 2008-2009 to 2013-2014 not only that he has also drawn salary. He invites our attention to the various deposit vouchers wherein the applicant has signed. Even on 20th November, 2013, the applicant has drawn Rs.10,000/- towards his fees. The learned APP submits that, the contention of the applicant that his resignation was accepted, is in dispute, as a matter of fact that his resignation from the post of Cashier was not accepted.

5. In reply to the submissions made by the learned counsel appearing for the applicant in Criminal Application No. 3285/2015, the learned APP appearing for the respondent – State submits that, the scope of investigation is not restricted only to the financial year 2013-14, however, respondent no.2 during the audit, noticed that since the registration of the said society, contrary to the provisions of the bye-laws, the Managing Committee in collusion with the employees have disbursed the loan amount and also not recovered the same. In collusion with the then Auditor, who audited / inspected the record of the society for earlier period in collusion with the members of the Managing Committee and employees have prepared false

documents showing that the financial affairs of the society are in good health and as a matter of fact the said society is running in making profits.

6. We have heard the learned counsel appearing for the applicants, and the learned APP appearing for the respondent–State at length. With their able assistance, we have perused the averments in the applications, grounds taken therein and the investigation papers. Upon perusal of the investigation papers, it clearly reveals that, the applicant in Criminal Application No.546/2015 had played active role even in recent past of conducting audit by the Auditor. There are deposit vouchers signed by him; amount is also withdrawn by him. There is also an affidavit Rs.100/- on stamp papers that, personally he will be responsible for the affairs of the said society for the period, which is mentioned in the said affidavit.

Therefore, further investigation is necessary so as to bring on record truth and involvement of the accused.

7. So far as applicant in Criminal Application No.3285/2015 is concerned, admittedly, he was member of the Managing Committee, whether his resignation was accepted or otherwise, would lead the adjudication of the disputed questions of fact as submitted by the learned APP. The scope of investigation is not restricted only to one financial year, but the investigation is being carried out for the past period also. There are serious allegations of disbursement of loan contrary to the provisions of the bye-laws, and there is also no attempt to recover the said amount. Therefore, the prayer for quashing the FIR deserves no consideration. The Supreme Court in the case of ***Bhaskar Lal Sharma and another***

Vs. Monica and others[1] in para 11 and 12 held thus:

> *11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.*

1 [2014] 3 SCC 383

> *12. Insofar as the offence under Section 406 of the Penal Code is concerned, it is clear from the averments made in Paras 16, 18, 24 and 29 of the complaint petition that it has been alleged that the appellants were entrusted or had exercised dominion over the property belonging to the respondent and further that the appellants had unlawfully retained the same. The statements made in Para 6 of the complaint also alleges retention of cash and other gifts received by the respondent complainant at the time of her marriage to the Appellant 2 – accused. In the face of the said averments made in the complaint petition, it cannot be said that the complaint filed by the respondent is shorn of the necessary allegations to prima facie sustain the case of commission of the offence under Section 406 by the appellants.*

8. The Supreme Court in the case of ***CBI***

Vs. Jagjit Singh[2], Their Lordship of Supreme Court in para 15 elucidated as under:

> *"15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with Banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima Facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any Court nor anything on*

2 2013 DGLS [Soft] 675

> *record to suggest that the offenders were entitled to secure the order in the ends of justice.*
>
> *In the instant case, the High Court has not considered the above factors while passing the impugned order. Hence, we are of the opinion that the High Court erred in addressing the issue in right perspective."*

9. Therefore, for the reasons aforesaid, we are not inclined to quash the First Information Reports, hence both Criminal Applications stand rejected.

10. The observations made herein before are *prima facie* in nature. This order will not preclude the applicants to apply for discharge in the event of filing of the charge-sheet by the Investigating Officer.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC