IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4609 OF 2016

1] Vitthal s/o. Ganpat Chothve,
Age: 44 years, Occ:Agriculture,
R/o. Kherda, Tq. Pathri,
Dist. Parbhani.

2] Tukaram s/o. Tatyaro Hoge,
Age: 48 years, Occ:Agriculture,
R/o. Kherda, Tq.Pathri,
Dist. Parbhani.

3] Shridhar s/o. Ganpatrao Mhaske,
Age: 45 years, Occ:Agriculture,
R/o.Kherda, Tq. Pathri,
Dist. Parbhani. **APPLICANTS**

VERSUS

1] The State of Maharashtra,
Through the Investigation Officer,
Crime No.0349/2016, registered with
Modha Police Station, Parbhani,
Tq. & Dist. Parbhani.

2] Pravin s/o. Munjajirao Ijate
Age: 48 Years,Occ. Service,
Special Auditor Class-II,
Co-op.Society [Cotton],
Parbhani Tq. and Dist.Parbhani
[Amendment carried out as per
Court’s Order dtd.08.09.2016
& 27.09.2016] **RESPONDENTS**

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Mr.D.A.Mane, Advocate for the applicants
Mr.S.G.Karlekar, APP for Respondent / State

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

Reserved on : 21.02.2017
Pronounced on : 23.02.2017

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

1] This Application is filed with the following prayer:

> B] This Criminal Application may be allowed and First Information Report in Crime No.0349/2016 registered with Mondha police Station Parbhani, Tq. & Dist. Parbhani for the offence punishable U/sec.420, 465, 468, 471, r/w 34 of the Indian Penal Code may kindly be quash and set aside.

2] The learned counsel appearing for the applicants submits that, so far as observations in the special audit against the present applicant no.1 are that the scheme is commenced on 18th February, 2011, and the marriage of the daughter of the applicant no.1 was performed on 5th March, 2011, and therefore, the said scheme was not applicable to his proposal. It is submitted that the conclusion reached by the Special Auditor are contrary to the record maintained by his office. There is no fraud on the part of the applicants for securing the loan in Shubh Mangal Marriage Scheme. The allegations against applicant nos.2 and 3 are that they have secured the loan from Bank for performing the marriage of their sons. As per the allegation in the complaint, the said scheme is not applicable for performing of marriage of the sons. In fact, the scheme itself contemplates that the loan will be disbursed for performing the marriage of the son or daughter. Therefore, there is no fraud played by the present applicant nos.2 and 3 while securing the loan. Even if the allegations in the FIR are read in its entirety, an ingredients of Section 420 of the Indian Penal Code are not attracted.

3] The learned counsel further submits that before registration of FIR, the authorities ought to have made compliance of the provisions of Sections 81 to 88 under the Maharashtra Co-operative Societies Act. Admittedly, the said procedure is not followed. The provisions of Section 88 specifically contemplate elaborate procedure so as to conduct enquiry about the irregularity or illegality which resulted into financial loss to the Co-operative Societies. In the present case, the mandate of Section 81 (5) (b) of the Maharashtra Co-operative Societies Act is not followed. Therefore, relying upon the averments in the Application, grounds taken therein and annexures thereto, the learned counsel appearing for the applicants submits that the application may be allowed.

4] On the other hand, the learned APP appearing for respondent–State relying upon the allegations in the FIR and also the affidavit-in-reply filed by respondent no.2 submits that, after proper enquiry and audit the First Information Report is lodged, which needs investigation. It is only after investigation truth will surface on record. It is submitted that respondent no.2 was directed to conduct test audit under the provisions of Section 81 [3] of the Maharashtra Co-operative Societies Act, 1960, by the Divisional Joint Registrar, Co-operative Societies, Aurangabad Division, Aurangabad. After enquiry, he submitted test audit report on 08.07.2016 to the Divisional Joint Registrar, Co-operative Societies, Aurangabad. On the very same day, the said Authority directed respondent no.2 to lodge the criminal complaint against the applicants. Applicant no.1 Vitthal Ganpat

Chothve had applied for loan for the marriage of his daughter on 25th June, 2011, and the same is sanctioned on 28th June, 2011. As a matter of fact, the marriage of the daughter of the said applicant was already performed on 5th March, 2011. The Circular issued by the Chief Executive Officer of the Parbhani District Central Co-operative Bank and which is communicated to the Branch Manager of the said Bank in District Parbhani was issued on 7th May, 2011, and the loan sanctioned to applicant no.1 was in violation of the Circular issued by the Parbhani District Central Co-operative Bank for extension of medium term loan under the Shubhamangal Scheme for the benefit of individual members of the said Bank.

5] It is submitted that as regards applicant no.2 Tukaram Tatyarao Hoge, he filed application jointly with his son namely Mahadeo Tukaram Hoge on 30th June, 2011, for loan under Shubhamangal Scheme for the marriage of his daughter. However, it reveals from the record that the wedding card submitted as proof of marriage pertains to the marriage of his son, which was performed on 23rd February, 2011 i.e. prior to the date of Circular in respect of the said Shubhamangal scheme. It is submitted that applicant no.2, in his application, has obtained loan fraudulently under the scheme for the marriage of his son by submitting an application for marriage of daughter in contravention of eligibility criteria as mentioned in the Circular dated 7th May, 2011, in respect of the said Shubhamangal scheme. Even otherwise the loan granted under the said scheme to applicant no.2 is for marriage performed prior to the enforcement of the said scheme i.e. Shubhammanagal scheme. It is submitted that demand of loan and sanction of such loan in favour of applicant no.2 was illegal since he was not eligible for disbursement of said loan. There was clear intention on the part of applicant no.2 to cheat the Bank in collusion and connivance with the Bank officials working at the relevant time.

6] It is further submitted that applicant no.3 Shridhar Ganpatrao Mhaske applied for loan under the said Subhamangal scheme for the marriage of his daughter vide application dated 30th June, 2011. But, the wedding card submitted as proof of marriage is in respect of marriage of his son. Therefore, it is apparent that applicant no.3, in his application, has given wrong information thereby played fraud and cheated the Bank so as to obtain the loan under the scheme for the marriage. The learned APP also invites our attention to the relevant documents and submits that the First

Information Report needs further investigation.

7] We have heard the learned counsel appearing for the applicants and the learned APP appearing for the respondent–State. We have carefully perused the allegations in the FIR and there is no manner of doubt that the ingredients of the alleged offences have been attracted, and therefore, the alleged offences need further investigation. Upon perusal of the factual aspect of the matter, it is abundantly clear that the information given by the applicants in their application was not correct, and *prima facie* it appears that by misrepresentation and fraudulent intention, they have obtained the loan under the said scheme. We do not wish to go into greater detail of the allegations in the FIR since the investigation is in progress. Suffice it to say that on perusal of the allegation in the FIR, averments in the reply filed by respondent no.2 and also other documents placed on record by respondent no.2 with his affidavit-in-reply, in our prima facie opinion the alleged offences have been disclosed and needs further investigation. Therefore, no case is made out for quashing the First Information Report and hence the Criminal Application stands rejected.

8] The observations made herein above are *prima facie* in nature and only for the purpose of deciding the present application.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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