

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

CRIMINAL WRIT PETITION NO.1072 OF 2016

1. Omprakash s/o.Dadappa Koyate,
Age: 64 years, Occ : Business,
R/o. Niwara Housing Society,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
2. Jintendra Kantilal Shaha
Age: 62 years, Occ : Business,
R/o. Surya Complex, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
3. Mohanlal s/o. Anandram Zavar,
Age: 68 years, Occ : Business,
R/o. Kapad Bazar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
4. Padmakant s/o. Shankarrao Kudale,
Age: 70 years, Occ : Agri.
R/o. village Takli, Tq.Kopargaon,
Dist. Ahmednagar.
5. Gulabchand s/o. Khemchand Agrawal,
Age: 70 years, Occ : Business,
R/o. Vivekanand Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
6. Rajkumar s/o. Suganchand Bumb,
Age: 55 Years, Occ : Business,
R/o. Gandhi Chowk, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
7. Ramchandra s/o. Motilal Baglecha,
Age: 60 years, Occ: Business,
R/o. New Jain Temple, Tera Bungalow,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

8. Arvind s/o. Damodhar Patel,
Age: 60 years, Occ : Business,
R/o. Nivara Housing Society,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
9. Changdeo s/o. Eknath Shirode,
Age: 60 years, Occ : Business,
R/o. Shivaji Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
10. Madhukar s/o. Jagannath Pawar,
Age: 65 years, Occ : Business,
R/o. village Khadki, Tq. Kopargaon,
Dist. Ahmednagar.
11. Mrs. Rohini w/o. Sudhir Koyate,
Age: 50 years, Occ : Household,
R/o. Niwara Housing Society,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
12. Kunda s/o. Babasaheb Jangam,
Age : 55 years, Occ : Nil,
R/o. Kapad Bazar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
13. Samata Urban Credit Co-operative
Bank Main Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar
Through its Managing Director
Petitioner no.14
14. Sachin s/o. Shankarlal Bhatad
Age: 40 years, Occ : General Manager,
R/o. Sai City, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
15. Janardhan s/o. Sudhakar Kadam,
Age: 40 years, Occ : Recovery Officer,
R/o. Nivara Housing Society,

Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

16. Raghunath s/o. Sadashiv Autade,
Age: 60 years, Occ : Branch Manager,
R/o. Laxmi Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
17. Sanjay s/o. Sahebrao Jadhav,
Age: 45 years, Occ : Cashier,
R/o. Gokulnagari, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
18. Sunil s/o. Mohanlal Bhutada,
Age: 54 years, Occ : Government Valuer,
R/o. Pravara Housing Society,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

PETITIONERS

[orig. accused]

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Deputy Commissioner of Police,
Circle-2, Aurangabad City,
Aurangabad.
3. Omprakash s/o. Babuappa Khake,
Age: 60 years, Occ : Business,
R/o. Seven Hill, Opposite Lokvikas
Bank, Aurangabad
At present R/o. Flat Nos.10 and 11
Chinar Apartment, Third Floor,
Near Krushi Bhavan, Shivaji Nagar,
Pune.

RESPONDENTS

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Mr.R.N.Dhorde, Senior counsel instructed by
Mr.Vikram R. Dhorde, Advocate for the
petitioners

Mr.A.B.Girase, Public Prosecutor for
respondent nos.1 and 2.

Mr.A.N.Kakade, Advocate for respondent no.3.

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

Reserved on : 28.04.2017

Pronounced on : 05.05.2017

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

1. Heard.

2. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3. Brief facts leading for filing the
petition are as under:

It is the case of the petitioners
that the various litigations are pending
between the petitioner no.13 and respondent
no.3. The details of the said litigation,
outcome of the said litigation and also the

actions taken against respondent no.3 for recovery of loan, has been extensively stated in the Writ Petition. The main grievance of the petitioners is that, (a) despite all these litigation mentioned in the Writ Petition, and various orders passed by the authorities issuing certificates under Section 101, which has become final, (b) challenging the auction proceedings, which has become final, (c) challenging the fixation of upset price, which has become final, (d) challenging the granting of 'R' certificates under Section 100, which has also become final, and (e) pendency of the Writ Petition No.3512/2014 in the High Court, respondent no.3 is so influential that, he made application to respondent no.2 Deputy Commissioner of Police, Circle-2, Aurangabad City making certain allegations, and respondent no.2 high handedly and *mala fidely* without authority issued notice dated

02.08.2016 to petitioner no.18, who is Government Valuer and has submitted the valuation report to the District Deputy Registrar for fixing upset price.

4. Learned senior counsel invites our attention to the fact that, the loan amount in crores of rupees was borrowed by respondent no.3 from petitioner no.13 – Samata Urban Credit Co-operative Bank in the year 2008 and 2009, and due to non payment of such huge amount, the petitioners approached to the various Forums including the High Court. He invites our attention to the pleadings in the petition and submits that, in spite of various orders passed by the authorities issuing certificates under Section 101, which has become final, the auction sale has also become final, the fixation of upset price, which has also become final, the granting of 'R' certificates under Section 100, which has

become final and even Writ Petition No.3512/2014 filed in the High Court is pending, respondent no.2 has courage to entertain the complaint filed by respondent no.3. Learned senior counsel submits that, when the civil litigation is pending between the parties, respondent no.2 had no business to issue notice to petitioner no.18 or any other Government Authorities in relation to such civil dispute pending between petitioner no.13 and respondent no.3. He pressed into service exposition of law by the Supreme Court in the case of *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*¹ and submits that, the Supreme Court has deprecated practice of taking recourse to criminal law, when the dispute is arising out of the civil transactions and same is of civil in nature. He invites our attention to the paras 19, 27 and 28 of the said judgment and submits that, the Supreme Court has

¹ [2015] 6 SCC 287

deprecated practice of bypassing statutory remedies and opting for prosecution route for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement which the financial institution possibly might not have acceded. Therefore, he submits that, issuance of the notice by respondent no.2 to the Government Valuer i.e. petitioner no.18, is nothing but pressurizing tactics so as to ensure that, petitioner no.13 should come across table for one-time settlement. The learned senior counsel submits that, converting civil case into criminal proceedings by giving colour of criminality to a civil case would amount to abuse of process of law. In support of the aforesaid contention, he pressed into service an exposition of law in the cases of *Rajib Ranjan and others v. R. Vijaykumar*², *Binod Kumar and others Vs. State of Bihar and*

2 [2015] 1 SCC 513

*another*³, *Thermax Limited and others Vs. K.M.Johny and others*⁴ and also in the case of *M/s.Indian Oil Corporation Vs. M/s. NEPC India Ltd. and ors.*⁵. In support of his contention that, in order to prevent injustice or abuse of process, it is incumbent to consider the document / documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Criminal Procedure Code. He invites our attention to the para 20 of the judgment in the case of *Anita Malhotra Vs. Apparel Export Promotion Council and another*⁶. The learned senior counsel invites our attention to the pleadings in the petition, grounds taken therein, annexures thereto, affidavit-in-rejoinder to the affidavit-in-reply filed on

3 [2014] 10 SCC 663

4 [2011] 13 SCC 412

5 AIR 2006 SC 2780

6 [2012] 1 SCC 520

behalf of respondent no.2 and submits that, the petition deserves to be allowed.

5. On the other hand, learned Public Prosecutor relying upon the averments in the affidavit-in-reply submits that, keeping in view the provisions of Section 36 of the Criminal Procedure Code and also the judgment of the Supreme Court in the case of *State of Telangana Vs. Habib Abdullah Jeelani and others*⁷ and also the judgment of the Supreme Court in the case of *Lalita Kumari Vs. Government of Uttar Pradesh and others*⁸, it is permissible to cause preliminary enquiry if the complaint is received by the Superior Officer. However, relying upon the avements in the affidavit-in-reply and in particular para 11 thereof, he submits that, respondent no.2 realized after perusal of the complaint given by the complainant along with record discloses dispute of civil in nature and it

7 [2017] 2 SCC 779

8 [2014] 2 SCC 1

indicates necessity for enquiry only to ascertain whether the cognizable offence is disclosed or not. Therefore, the preliminary enquiry was initiated and necessary record was called. He submits that, since respondent no.2 is of the opinion that, after perusal of the complaint given by the complainant along with the record, dispute is predominantly civil in nature. Therefore, on instructions of respondent no.2, who is present in the Court, learned Public Prosecutor submits that, respondent no.2 has no objection to allow the petition.

6. Learned counsel appearing for respondent no.3 invites our attention to the Section 36 of the Criminal Procedure Code and also other relevant provisions of the Code of Criminal Procedure, and relying upon the judgment of the Supreme Court in the case of *Lalita Kumari and State of Telangana* [cited *supra*] submits that, respondent no.2 was well

within his power to cause preliminary enquiry. He invites our attention to the allegations in the complaint filed by him to respondent no.2 and submit that, the cognizable offences have been disclosed, the petitioners have cheated respondent no.3. They have dealt with his property very casually and fixed meager amount towards upset price of the said property. There is fabrication of the documents at the hands of the office bearers of petitioner no.13. He submits that, respondent no.3 cannot be rendered remedy-less, and therefore, the petition may be rejected.

7. Learned counsel further submits that, petitioner nos.1 to 17 had no cause of action to file present Petition inasmuch as no notices are issued by respondent no.2 to petitioner nos.1 to 17, they can file reply in case notices are issued to them. Therefore, he submits that, the petition may

be rejected.

8. We have given careful consideration to the submissions of the learned Senior Counsel appearing for the petitioners, learned Public Prosecutor appearing for respondent nos.1 and 2, and the learned Advocate Mr.A.N.Kakade appearing for respondent no.3. With their able assistance, we have perused the pleadings in the petition, grounds taken therein, annexures thereto, and the affidavit-in-reply filed by respondent no.2, affidavit-in-rejoinder to the affidavit-in-reply filed on behalf of respondent no.2. Upon perusal of the pleadings in the petition, the petitioners have stated the facts extensively, however, for the purpose of deciding this petition, it is not necessary to refer to those facts in detail, suffice it to say that, it is admitted position that, respondent no.3 borrowed loan from petitioner no.13, in the

year 2008 and 2009. The said amount runs in crores. Thereafter, the various proceedings were initiated either by the petitioners or by respondent no.3, and ultimately, certificate under Section 101 of the Maharashtra Co-operative Societies Act has been issued by the Competent Authority for recovery of amount. In pursuance to the said certificate, there was auction of the properties, the said proceedings were challenged by respondent no.3, however, the auction proceedings became final. Thereafter, there was challenge to the fixation of upset price, but which has also become final. There was also challenge to the granting of 'R' certificate under Section 100 of the Maharashtra Co-operative Societies Act, which has also become final, and it is also not in dispute that, Writ Petition No.3512/2014 is pending before the High Court. It appears that, the litigation

reached up to the High Court and certain orders are also passed by the High Court. Therefore, there is no manner of doubt that, the litigation between the parties appears to be civil in nature.

It appears that, respondent no.3 filed complaint with the MIDC Police Station at Aurangabad, however, the said complaint was not entertained, and the respondent no.3 approached respondent no.2. It appears that, respondent no.2 issued notices to petitioner no.18 and also authorities working in the Co-operative Department, asking certain documents. In fact, respondent no.2 should have been more careful to find out from the averments in the complaint and the documents submitted by the complainant that, whether it is necessary to issue notices to petitioner no.18 or other Government authorities calling the record. However, it appears that, respondent no.2, without proper application

of mind, issued notices to petitioner no.18 and also other authorities from the Co-operative Department of the Government of Maharashtra calling the record.

9. Be that as it may, the Public Prosecutor appearing for respondent no.2 relying upon the averments in the affidavit-in-reply, and in particular para 11 thereof, on instructions of respondent no.2, who is present in the Court hall submitted that, this Court may allow the Writ Petition. In that view of the matter, we do not wish to elaborate the reasons about conduct of respondent no.2, in fact respondent no.2, after perusal of the averments in the complaint and record, realized that, dispute was prominently civil in nature, in that case, he himself should have taken note of such conclusion/decision reached by him in the station diary. However, he instructed the Public Prosecutor to make oral statement

before this Court that, in the light of the averments in para 11 of the affidavit-in-reply, he has no objection to allow this Petition.

10. We do not wish to make further observations about conduct of respondent no.2, in view of the graceful submissions made by Mr.A.B.Girase, Public Prosecutor during the course of hearing. However, we issue word of caution to respondent no.2 that, as and when in future, such kind of complaint would be received by him, he shall keep in mind the law laid down in afore-mentioned judgments of the Supreme Court, which are cited across the Bar by learned senior counsel appearing for the petitioners during the course of hearing, and then proceed with such complaint.

11. We are aware that, respondent no.3 was pursuing his complaint with belief that,

the MIDC Police Station, Aurangabad, will take care of his complaint. However, upon considering the pleadings in the petition, annexures thereto and also other documents made available for perusal, we are of the view that, the entire proceedings/litigation between petitioner no.13 and respondent no.3 appears to be of a civil in nature. Whenever there is any complaint, which discloses cognizable offence, the aggrieved person has to approach to the concerned Police Station in whose jurisdiction cause of action has arisen by invoking the provisions of Section 154 of the Criminal Procedure Code. He cannot approach directly to the superior police authorities, who are not concerned with his grievance or had no jurisdiction directly to entertain complaint in relation to his grievance. It is true that, the notices are not issued to petitioner nos.1 to 17 by respondent no.2, nevertheless the notices

were issued to petitioner no.18 and also other Government authorities, in connection with / in relation with the civil disputes pending between petitioner no.13 and respondent no.3. Therefore, we are of the opinion that, in the peculiar facts and circumstances of this case, respondent no.2 should not have issued notices before satisfying himself on the basis of averments in the complaint and record submitted by respondent no.3, and also without addressing himself about his power to entertain such complaint. Therefore, we are of the opinion that petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause-B.

12. So far as the relief claimed in prayer clause-C is concerned, we are not inclined to entertain the said prayer at present. As and when such occasion will

arise, we grant liberty to the petitioners to approach the appropriate Forum. We make it clear that, we have passed this order in the peculiar facts and circumstances of this case and it does not mean that, there is impediment to the parties to avail of an appropriate remedy as available in law for the redressal of their grievances in relation to the dispute between them.

13. With the above observations, the Writ Petition stands disposed of. Rule is made absolute on above terms. We make it clear that, the observations made herein above are confined to the adjudication of the present petition.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE