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

**CRIMINAL APPLICATION NO. 4744 OF 2016**

1. Shri. Abhay Shantilal Jain,
   Age : 52 years, Occu. Business,

2. Shri. Arvind Shantilal Jain,
   Age : 50 years, Occu. Business,

3. Shri. Ajay Shantilal Jain,
   Age : 48 years, Occu. Business,

   All R/o Near Jain Temple,
   Mahavir Marg, Bodwad,
   Tal. Bodwad , Dist. Jalgaon.

4. Shri. Alkesh Zumberlal Lalwani,
   Age : 35 years, Occu. Business,
   R/o Pachora Road, Jamner,
   Tal. Jamner, Dist. Jalgaon. ...APPICANTS

versus

1. The State of Maharashtra,
   through Police Station, Jamner
   Tal. Jamner, Dist. Jalgaon.

2. Deepak Anant Atravalkar,
   Age : major, Occu. Sanadi lekpal
   R/o 3, Suniketan, Shahunagar,
   Morako Hotel war Jalgaon
   Tq. & Dist. Jalgaon.

...RESPONDENTS

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Mr. Sandeep Gorde Patil, Advocate for Applicant
Mr. S.G. Karlekar, APP for Respondent-State

**CRIMINAL APPLICATION NO. 4907 OF 2016**

1. Sachin Suresh Jain
Age : 39 years, Occu. Business,

2. Shital Sachin Jain,
Age : 37 years, Occu. Housewife,

Both R/o 28, Patel Nagar,
Near Bhagirath High School,
Jalgaon, Tq. & Dist. Jalgaon. ...APPLICANTS

versus

1. The State of Maharashtra,
Through Jamner Police Station,
Dist. Jalgaon.

2. Deepak Anant Atravalkar
Age : 53 years, Occu. Service,
R/o Suniketan, Shahunagar,
Jalgaon, Tq. & Dist. Jalgaon.

...RESPONDENTS

.....

Mr. Bhausaheb S. Deshmukh, Advocate for Applicants
Mr. S.G. Karlekar, APP for respondent-State.

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

**RESERVED ON : 7TH MARCH, 2017.**

**PRONOUNCED ON : 27th MARCH, 2017.**

**JUDGMENT : ( Per : K.K. Sonawane, J.)**

1] Rule. Rule made returnable forthwith. The matter is taken up for final hearing with the consent of parties.

2] These applications are filed for seeking relief to quash and set aside criminal proceedings initiated against the applications by exercising inherent jurisdiction recognized under Section 482 of the Cr.P.C. Both the applications pertain to identical relief based on similar facts and circumstances as well as allegations similar in nature made in the FIR, bearing Crime No. 102 of 2016, registered against the respective applicants at Police Station, Jamner, District Jalgaon, for the offence punishable under sections 420,406, 408, 409, 120-B, r/w. 34 of IPC. Therefore, we prefer to hear and adjudicate the matter in issue of both the applications by this common judicial pronouncement.

3] Facts which led to the prosecution of applicants culled out in brief, are as under :-

That, on 29.7.2016, the first informant – Shri Deepak Anant Atrawalkar, a Government Auditor of the Cooperation Department of State of Maharashtra, filed the report at Police Station, Jamner, District Jalgaon and alleged that he had conducted the audit of accounts of an Urban Cooperative Credit Society known as, “Suresh Dada Jain Nagri Sahakari Patsanstha Ltd”, Jamner, District Jalgaon for the year 2015-16. After the audit, he forwarded the report to the superior i.e. District Deputy Registrar, Cooperative Societies, Jalgaon (hereinafter referred to as, “the DDR” for sake of brevity). On receipt of report, from the concerned Government Auditor, the DDR, Cooperative Societies, Jalgaon referred the matter to the District Level Scrutiny Committee and accordingly the Audit Report was dealt with by the Scrutiny Committee, wherein it was found that there were several mis-deeds committed by the Directors, employees and borrowers of the concerned credit society in connivance with each other and duped/defrauded the credit society,its members and depositors. It has been alleged that huge loans were disbursed to the relatives of the office bearers as well as their kiths and kins and friends without obtaining proper security and without following regular norms. The Directors and employees of the Credit Society as well as borrowers hatched a conspiracy and misappropriated the funds of the depositors kept in the custody of Credit Society. The loans were sanctioned contrary to the bye-laws prescribed for loan proposals of the society. In view of the financial misdeeds and irregularities the concerned DDR, Cooperative Societies, Jalgaon bade the first informant – Mr. Deepak Atrawalkar, a Government Auditor to lodge the report to the police of Jamner Police Station, for penal action against the miscreants. Accordingly, First Information Report No. 102 of 2016 came to be lodged in Police Station, Jamner, District Jalgaon, for the offence under Sections 420,406, 408, 409, 120-B, r/w. 34 of IPC and set the criminal law in motion. The impugned FIR is the subject matter of present applications for exercising inherent powers under Section 482 of Cr.P.C. by this court.

4] It has been alleged that huge loan amount of Rs. 25 Lakhs each, in total Rs. 75 Lakhs, came to be disbursed in favour of these applicant Nos. 1 to 3 i.e. Abhay Jain, Arvind Jain and Ajay Jain without obtaining proper security as well as contrary to the model bye-laws of the credit society. The bye-laws of the society contemplates that such huge amount of Rs. 75 Lakhs could not have been sanctioned and disbursed to its member and particularly, not more than one member of the same family. According to prosecution, the applicants in connivance with the Directors and office bearers of the credit society availed the financial assistance for their personal gain. They hatched the criminal conspiracy to commit Criminal Breach of Trust and deputed the members and depositors of the credit society. In regard to the allegations of the applicant No.4 Mr. Alkesh Lalwani, the first informant – Government auditor, casted allegations that the Cash-credit Loan Facility of Rs. 25 Lakhs was sanctioned to him for his food grain business. But, the applicant No.4 procured the finance under the pretext of cash credit loan facility to the tune of Rs. 1,42,92,883/-, which is against the provisions as envisaged under the model bye-laws of the credit society. The applicants and the Directors as well as office bearers of the credit society, in connivance with each other, duped/defrauded the members and depositors of the society. The first informant – Government auditor came across several misdeeds and financial irregularities and, therefore, he filed the FIR against the applicants.

5] The Learned counsel for the applicants - Shri Jain brothers and Shri Alkesh Zumbarlal Lalawni in Criminal Application No. 4744 of 2016 vehemently contended that these applicants have no concern at all with the allegations nurtured in the impugned FIR by the Government Auditor Shri Atrawalkar. The learned counsel for the applicants explained that the impugned FIR is politically motivated action. It came to be filed only to tarnish and malign the reputation of the applicants within the vicinity of

Jamner Tahsil. According to learned counsel, the applicants have repaid the entire loan amount and discharged their financial liability. Therefore, they can not be held guilty for any financial irregularities or infirmities in the affairs of the credit society. They are only members of the credit society. They have no concern at all with the Board of Directors or office bearers of the credit society. Their loan proposal was scrutinized and sanctioned by the concerned Directors as per the Rules prescribed under the bye-laws of the society. The learned counsel also harped on the circumstances that the provision of Section 82 of the Maharashtra Cooperative Societies Act, 1960 provides remedy to rectify any defect or irregularities in the working of the society as pointed out by the Auditor in his Audit Report. In order to rectify the defect, the applicants deposited the entire loan amount and discharged their financial liability towards the credit society for due rectification of the irregularities pointed out by the Government auditor. Therefore, no question arises to initiate penal action against the borrowers/applicants. The applicants also produced the "No Dues Certificate" issued by the credit society in their favour on record. The learned counsel submitted that in view of the Government Circular dated 1st June, 2012, the concerned DDR, Cooperative Societies, Jalgaon should have given opportunity of hearing to the applicants prior to any penal action against them. The first informant – Shri Atrawalkar was forced to file FIR in hasty manner without compliance of the provisions as envisaged under the Maharashtra Cooperative Societies Act, 1960 as well as Government Circular dated 1.6.2012. The applicants cannot be blamed for any misdeeds or irregularities in the affairs of the credit society. According to the learned counsel, there are no complaints against the applicants by any members or depositors of the credit society. But, persons, namely, Advocate Shri Krishna Bankar and Dr. Sanjay Patil, who have no concern with the functioning of the credit society were instrumental to lodge the impugned FIR against the applicants and others with oblique motive to stall the functioning and wind up the functions of the credit society. The applicants have earned good reputation in their business. The credit society is also gaining profit by providing financial assistance to the applicants. The securities of the assets of applicants were also furnished to the credit society against loan facility provided to the applicant. The learned counsel explained the facts and circumstances on record in detail and urged that there are no circumstances on record, prima facie, to constitute any sort of cognizable offence against the applicants. He alleged that the first informant Mr. Deepak Atrawalkar was forced to file FIR against the applicants and others by concerned DDR, Cooperative Societies, Jalgaon vide his confidential letter dated 28.6.2016. Hence, he prayed to exercise the inherent jurisdiction and quash and set aside the impugned FIR registered against the applicants.

6] The learned counsel for applicants - Shri Sachin Jain and Smt. Sheetal Jain in Criminal Application No. 4907 of 2016 stepped into the shoes of learned counsel appearing for applicants in Criminal Application No. 4744 of 2016, and strenuously asserted that these applicants have no concern at all with the allegations made in the impugned FIR. They have not committed any illegal act and they are innocent. These applicants borrowed the loans for business purpose under the Cash-credit loan facility. They have regularly repaid the loan amount without any default. These applicants also produced the "No Dues Certificate" issued by the Credit Society in their favour, on record. According to learned counsel, the entire allegations made in the FIR do not constitute any cognizable offence against the applicants. He relied upon the exposition of law laid down by the Apex Court in the case of ***State of Haryana Vs. Bhajanlal and others, AIR 1992 SC 604.*** He submitted that the alleged FIR against the applicants is vexatious and an abuse of process of law. The applicants are embroiled in the crime with ulterior motive to wreak vengeance. The counsel for applicants, therefore, prayed that the application may be allowed and the impugned FIR be quashed and set aside.

7] Per contra, learned APP appearing for the prosecution vociferously opposed the contentions propounded on behalf of respective applicants in both the applications. He submitted that the allegations nurtured on behalf of prosecution are serious in nature. The applicants, in connivance with the Board of Directors of the credit society and its officials, hatched the criminal conspiracy and committed misdeeds for availing financial benefits. They committed mischief by utilizing the funds of the society for their business purpose, without following regular procedure, as prescribed under the bye-laws. Learned APP submitted that one of the members of the credit society – Dr. Patil, ventilated the grievances about the illegal financial affairs of the society to the concerned authority of the

Cooperation Department. He casted the aspersions that the credit society has disbursed huge loan in favour of applicants without any security and contrary to the provisions of the bye-laws. The allegations in the FIR, prima-facie, constitute a cognizable offence against the applicants. The allegations nurtured in the FIR demonstrates that the applicants in collusion with each other, availed the financial benefits and duped the members and depositors of the credit society. The investigation is in progress and it is at initial stage. It would unjust and improper to cause any interference in the investigation at this primitive stage of investigation, by exercising inherent powers under Section 482 of Cr.P.C. Therefore, the learned APP prayed not to nod in favour of the applicants and dismiss the applications.

8] We have carefully considered the rival contentions propounded on behalf of both sides. We have also perused the impugned FIR as well as the material placed on record. It is not put in controversy that the applicants are members of the Urban Credit Cooperative Society namely, "Suresh Dada Jain Nagari Sahakari Patsanstha Pvt. Ltd.", Jamner. It is not denied that applicants being members of the credit society availed the financial assistance for their business purpose. However, during the course of audit of the accounts of credit society, it was revealed that the financial assistance provided to the applicants were contrary to the model bye-laws of the credit society. Moreover, these loan facilities were granted without obtaining proper security from the borrowers/applicants. It has been alleged that the applicants, concerned Directors of the Credit Society, its office bearers, all in connivance with each other, hatched the criminal conspiracy and misused the hard earned money of the depositors kept in the custody of credit society. The huge amount of loans were disbursed in favour of the applicants without following regular procedure under the rules of the credit society. There was violation of bye-laws for the financial benefits of the applicants. Therefore, the impugned FIR came to be lodged for penal action against the applicants, for the offence of criminal breach of trust, cheating and conspiracy etc.

9] It is to be borne in mind that the Supreme Court in number of cases has laid down the scope and ambit of the powers of Court as recognized under Section 482 of the Cr.P.C. The powers are to be exercised for administration of real and substantial justice. The inherent powers under Section 482 of Cr.P.C. would be exercised:

[I] to give effect to any order under this Code;

[ii] to prevent abuse of the process of any Court &

[iii] to otherwise secure the ends of justice.

It has been delineated that the inherent powers under Section 482 of the Code of Criminal Procedure, though wide, have to be exercised sparingly, carefully and with great caution. The frequent or uncalled for interference by the High Court at the preliminary stage of the investigation may result in causing obstruction in the progress of the investigation, which may not be in public interest. In the case of ***Inder Mohan Goswami and another vs. State of Uttaranchal and others (2007) 12 SCC 1***, the

Honourable Apex Court, in para.27 observed thus :-

> “27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”.

The Honourable Apex Court in the matter of ***Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre and others, (1988) 1 SCC 692*** observed in para.7 as under :

> “7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether It is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

The Honourable Supreme Court in the matter of “State of Haryana Vs. Bhajanlal”[1] has laid down seven categories of cases, by way of illustration, wherein the High Court can consider the prayer for quashing the FIR, which are as under :-

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1 AIR 1992 SC 604

*"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

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.*

10] In the present case, it has been specifically alleged that the applicants with dishonest intention hatched the criminal conspiracy with the office bearers of the credit society to commit the offence of criminal breach of trust and cheating. The applicants with *malafide* intention misappropriated the funds of the share holders and depositors entrusted to the credit society, for their own use and that too in violation of the guidelines prescribed by the model bye-laws of the urban credit society.

11] At this juncture, it is to be noted that the applicants did not put in question the factual aspects that they are members of the society and being members, they availed the loan facilities as alleged in the FIR. However, the applicants came forward with a specific contention that they have already repaid the amount to the credit society and discharged the financial liability. Therefore, they cannot be held responsible for any misdeeds or irregularities in the affairs of the society. The learned counsel for the applicants harped on the circumstances that the applicants have repaid the amount and, therefore, the FIR be quashed.

12] In view of attending circumstances and nature of allegations nurtured on behalf of prosecution, we are not in agreement with the submissions propounded on behalf of applicants that as they repaid the entire loan amount, they cannot be blamed for any irregularities or misconduct in the affairs of the society. In the present case, the investigation of the impugned FIR is in progress and at a primitive stage. However, allegations of sanction and disbursement of huge amount of loan in favour of applicants by ignoring the fetters imposed by the bye-laws of the society, itself indicates the involvement of the applicants being conspirators in this crime. The applicants are borrowers, and without their active connivance and participation, the financial assistance contrary to the general rules under the bye-laws of the society could not have been processed further for its disbursement in their favour. The factual aspect as well as the documents produced on record are sufficient to draw adverse inference that the applicants are having strong clout and could be beneficiaries of the loan facility, owing to their nexus and proximity with the Directors and office bearers of the credit society.

13] The offences alleged in FIR are of serious nature having its impact on the society and have potential to cause damage to the economic spine of the country and bring about financial crisis. The offences of such nature are more serious and not private offence in nature. It has also been delineated in the matter of ***State of Maharashtra through CBI Vs. Vikram Anantrai Doshi and others Criminal Appeal No.2048 of 2014***, that the offences involving banking and loan transactions are the offences of serious nature, where the FIR can not be quashed only on the ground that the loan is repaid.

It is worth to mention that it is not a simple case where the applicants borrowed the money from credit society for their business purpose and thereafter repaid it and obtained “No Dues Certificate” from Credit Society and clamouring that nothing more remained to be done. The factual score adumbrate the mode and manner in which the funds of credit society were siphoned off by the applicants in connivance with Directors and office bearers of the society. The criminal conspiracy of such nature and utilization of funds of Credit Society contrary to bye-laws is itself a foundation of criminal liability under the law. In the case of ***CBI Vs. Jagjit Singh reported in 2013 DGLS (Soft) 675*** Their Lordship of Supreme Court in paragraph No. 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 the 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 suffer. In the present case, there was neither an allegation regarding any abuse of process of any Court nor anything on 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.”

Obviously, offence relating to banking activities are hazardous to the public interest and well being of society. In such nature of offence relating to banking, the customers/depositors of the Credit Society are not only the victim of the crime but society in general is sufferer. The social interest would be on peril and prosecution cannot be treated as party alien to the entire aspect of the matter. Therefore, the factum of repayment of loan would not itself adversely affect the prosecution.

14] We would reiterate that at this juncture, the investigation is in progress and, therefore, in view of the guidelines delineated in Indar Mohan Goswami's case referred supra, it would be unjust and improper to give prima facie findings as to essential ingredients of the offence of criminal conspiracy are fulfilled or not. But, the facts and circumstances available on record, if taken at their face value sufficiently indicate the commission of criminal conspiracy. The agreement for accomplishment of an illegal act itself constitute an offence. Therefore, merely because the applicants repaid the entire loan amount and no loss is caused to the credit society, would not enough to exonerate the applicants from the criminal liability. The refund of loan amount cannot be an effective substitution for a criminal prosecution when the disputed act is itself an offence under law.

15] The learned counsel for the applicants laid much more emphasis on the provisions of Section 82 of the Maharashtra Cooperative Societies Act, in regard to rectification of error/defects in the accounts pointed out by the Government Auditor, i.e. first informant – Shri Atrawalkar. He submitted that in case defects are cured there would not be any penal action against the applicants. It is true that Maharashtra Cooperative Societies Act, 1960 is a self contained code. There cannot be any controversy about the rectification of defects in the accounts by availing the remedy under Section 82 of the Maharashtra Cooperative Societies Act by the office bearers of the credit society. But, in the matter in hand, the allegations made against the applicants can not be considered as a defect in the accounts. But, the applicants, in connivance with the Directors and office bearers, with a dishonest intention siphoned off the fund of society contrary to the provisions of the bye-laws. It would not be a mere defect but an serious financial offence under the criminal law. The applicants are the beneficiaries, who procured the finance without entitlement. They are equally responsible with the office bearers and Directors of the Credit Society for the offence of Criminal Breach of Trust and Cheating as well as defrauding the members and depositors of the Credit Society. Therefore, the provisions of section 82 of the Maharashtra Cooperative Societies Act, 1960 would not render any assistance to absolve the applicants from the criminal liability as alleged against the them. The applicants cannot use the provisions of Maharashtra Co-operative Societies Act, 1960 as a shield to evade the prosecution under IPC in the case. The account holders and depositors used to keep their hard earned money in the hands of strangers of Credit Society. But the borrowers like applicants, now a days, are utilizing the banking institution for making money over and above the money of the depositors.

16] We reiterate that, without active participation and indulgence of the applicant, there would not have been any misdeeds or misappropriation of funds of the credit society to disburse it in favour of applicants for their business purpose. In case, at this initial stage of investigation, if the applicants are exonerated from the criminal liability on the ground that they have repaid the loan amount, it may result in cynical disregard of law, which would have its impact on the society and people may lose faith from the judicial system. We are of the opinion that the investigating agency should avail the freedom to go into the whole gamut of the allegation to find out the truth to book the culprits of the crime. In such circumstances, we are not inclined to nod in favour of applicants to exercise the inherent powers under Section 482 of Cr.P.C. to quash and set aside the FIR.

17] We are of the opinion that there are circumstances on record, prima facie, to draw an inference that the applicants have an involvement in the crime being conspirators and without their active participation there would not have been any financial aid for their business, contrary to the bye-laws of the society and by defying the rules. The financial misdeeds on the part of applicant borrower, with the help of the Directors and office bearers cannot be overlooked in view of the seriousness of allegations of social wrong and it has a grave impact on the society. We do not find any substantial reason to cause any interference in the FIR at this primitive stage by exercising the inherent powers under section 482 of Cr.P.C. The applications being devoid of merits deserve to be dismissed. In sequel, both the applications stand rejected. Rule is discharged.

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| **[K.K.SONAWANE]** | **[S.S. SHINDE]** |
| **JUDGE** | **JUDGE** |

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