IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1280 OF 2014

Laxmikant Pandit Dhake,
Age : 55 Years, Occu. Service,
R/o. Shakuntala Nagar, Dhule Road,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon. .. Applicant

VERSUS

1] The State of Maharashtra

2] The Superintendent of Police
Jalgaon.

3] Pravin Laxman Kakuste,
Age : 37 Years, Occu. Labour,
R/o. At/ Post Shenpur, Tq. Sakri,
Dist. Dhule. .. Respondents.

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Advocate for Applicant : Mr. S. P. Brahme
APP for Respondent nos. 1 and 2 : Mr. R.V. Dasalkar
Advocate for respondent no.3 : Mr. A.S. Sawant

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WITH
CRIMINAL APPLICATION NO. 1596 OF 2014

1] Ratnakar Tarachand More,
Age : 46 Years, Occ. Service,
R/o. Garudbag, Dhule.

2] Ramesh Yashwant Pawar,
Age : 59 Years, Occ. Service,
R/o. 21, Anmol Nagar, Deopur,
Dhule

3] Chandrakant Naryan Desale,
Age : 52 Years, Occu. Service,
R/o. 26, Shakuntala Housing Society,
Deopur, Dhule.

4] Dilip Yashwant Wagh,
Age : 43 Years, Occ. Service,
R/o. Tuljai Nagar, Dhule.

5] Sanjay Sitaram Kuwar,
Age : 49 Years, Occ. Service,
R/o. Nalve Road, Nandurbar

6] Devidas Bhata Patil,
Age : 49 Years, Occ. Service,
R/o. Mukti Tq. & Dist. Dhule

7] Umakant Laxman Biraris,
Age : 44 Years, Occ. Service,
R/o. Bhaindar, Tq. Sakri,
District Dhule

8] Nishant Vishwasrao Randhe,
Age : 39 Years, Occ. Service,
R/o. Ptreshwar Colony, Shirpur,
Dist. Dhule

9] Suresh Gorakh Mali,
Age : 55 Years, Occ. Service,
R/o. Rajiv Gandhi Nagar,
Nandurbar.

10] Ashok Gulabrao Pawar,
Age : 52 Years, Occ. Service,
R/o. Borgaon Tq. Shirpur, Dist.
Dhule.

11] Kishor Shamrao Sonwane,
Age : 51 Years, Occ. Service,
R/o. Fatherrwadi, Tq. Kopargaon,
Dist. Ahmednagar

12] Manohar Lotan Patil,
Age : 44 Years, Occ. Service
R/o. Bank Colony, Amalner,
District Jalgaon

13] Rajendra Vasantrao Patil,
Age : 46 Years, Occ. Service,
R/o. Mohadi, Dhule

14] Darasingh Govind Valvi,
Age : 42 Years, Occ. Service,
R/o. Kumbharkhan Tq. Akkulkuwa,
Dist. Nandurbar

15] Dattatray Anant Shinde,
Age : 51 Year, Occ. Service,
R/o. Mandane, Tq. Shahada,
District Nandurbar.

16] Sanjaykumar Vedu Shinde,
Age : 45 Years, Occ. Service,
R/o. Kusumba, Tq/ & Dist.
Dhule

17] Sharad Kashniath Suryawanshi,
Age : 51 Years, Occ. Service,
R/o. Pradnya Colony, Nimkhedi
Road, Jalgaon

18] Kiran Ramchandra Dabhade,
Age : 47 Years, Occ. Service,
R/o. Malegaon Camp, Dist. Nashik

19] Ravindra Punamchand Saindane,
Age : 43 Yeas Occu. Service
R/o. Nijampur Tq. Sakri,
Dist. Dhule

20] Indas Katudya Gavit,
Age : 48 Years, Occ. Service,
R/o. Gopal Nagar, Taloda,
Dist. Nandurbar

21] Rajendra Fattesingh Suryawanshi,
Age : 48 Years, Occ. Service,
R/o. Mahavir Colony, Dhule

22] Shobhabai Lotan Pawar,
Age : 46 Years, Occ. Service,
R/o. Lalchand Nagar, Dhule

23] Chhaya Ramchandra Patil,
Age : 44 Years, Occ. Service,
R/o. Nagre Nagar, Sakri

Dist. Dhule

24] Kranti Popat Jadhav,
Age : 37 Years, Occ. Service, ..APPLICANTS
R/o. Ganesh Nagar, Shahada
District Nandurbar.

VERSUS

The State of Maharashtra

2] Pravin Laxman Kakuste,
Age : 37 Years, Occ. Labour,
R/o. Shenpur, Tq. Sakri
Dist. Dhule

3] DHULE & NANDURBAR DISTRICT
GOVERNMENT SERVANTS CO-OPERATIVE
BANK LTD, DHULE
Through Dilip Dhoman Patil,
Manager Administration,
A/p. Garudbag, Dhule .. Respondents

**CORAM :T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.**
DATE :27th SEPTEMBER, 2018.

JUDGMENT (Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2] Both the proceeding are filed for relief of quashing of C.R. No. 380 of 2013 registered with Chalisgaon Police Station, District Jalgaon for the offences punishable under Section 406, 402, 467, 471 and 34 of the Indian Penal Code. It can be stated that the provision of Section 120B of the Indian Penal Code also can be used in view of nature of allegations and material available.

3] Both the sides are heard.

4] Proceeding No. 1280 of 2014 is filed by the Chairman of one Educational Institution. The other proceeding is filed by the employees of Dhule and Nandurbar Government Servant Co-operative Bank Limited. The FIR is given by respondent no.2 Pravin. His brother Nitin was working as Assistant Teacher in the school of educational institution of applicant from proceeding No. 1280 of 2014.

5] The allegations are made against the Bank employee and Directors of the aforesaid Bank that even when Nitin had not taken loan from this Bank some record of application and disbursement of loan was created against Nitin. The allegations are made that attempt was made by the Bank to get certificate under section 101 of the Maharashtra Co-operative Societies Act against Nitin but that attempt was not successful and that proceeding was rejected. It is contended that even when loan was not taken by Nitin the Bank issued demand notice against Nitin and made correspondence with revenue authority to create encumbrance on the property of Nitin and complainant in respect of the said loan. It is contended that all such record was false one.

6] It is case of the complainant that after inquriy he realized that one Sunil Patil, Head Master of the Institution of applicant from the first proceeding had created record and had made Nitin and others, members of the aforesaid Bank and then by using their salary slip loan was taken from the Bank and for that record of the name of educational institution was used. It is contention of the complainant that he then contacted Sunil Patil and due to his insistence Sunil Patil gave in writing that loan was not taken by Nitin but it was taken by him. It is contended by the complainant that with this letter/record he approached the Bank Directors and the employees on 04.08.2013 and then the Bank gave in writing that they would settle the matter. It is contended that such steps are not taken and so by using false record the Bank is trying to recover the amount from Nitin and the complainant.

7] The submission made and record show that two loan transactions were made in the name of Nitin. The transactions were made in the month of February 2002 and December 2002 for different reasons like construction of house and marriage of sister. On the first occasion loan of Rs. 85,000/- was disbursed and on second occasion loan of Rs. 60,000/- was disbursed.

8] The submissions made and record show that after making inquiry, the Bank gave report against Sunil Patil on 06.11.2013 and the crime No. 363 of 2013 came to be registered in the Chalisgaon Police Station for the offences punishable under Sections 402, 406 of the Indian Penal Code. In the report it is contention of the Bank that in the year 2002 Sunil Patil was Head master of Prerana Vidyalaya of the institution of applicant from first proceeding had made some Assistant Teachers members including Nitin, brother of the complainant. He submitted the loan proposal in January 2002 in respect of all these Assistant Teachers and on the letter head of the Institution, written under taking and guarantee in respect of that loan was given. Allegations are made by the Bank that representation was made by Sunil Patil that his Institution had approval of Government and it was receiving Government grants. On this representation and by using that record the loan was sanctioned by the Bank. The loan of Rs. 1,45,000/- lakhs was given in the name of Sunil Patil, and loan of Rs. 85,000/- was given in the name of Ravindra Patil. The allegations are made that when there was default, inquiry was made by the Bank and it was realized that the institution itself was closed. There was no approval of the Government and no grants were released in favour of that educational Institution. Allegations are made that even when there was no approval to the institution no grants were released, the amount was taken as loan and on the date of FIR, the amount of Rs. 4,57,000/- lakh was due to the Bank.

9] The submissions made show that the applicant from first proceeding had issued the salary certificate and probably undertaking also. Apparently the amount went to the Institution. Such incidents are increasing day by day. In the names of the employees of the institution or in the name of farmers, institutions take loan and encumbrances are shown on the properties of such employees or farmers. The amount is misappropriated and then the creditor start proceeding against the owners of the properties as encumbrance is created on the properties in respect of the loan. As certificate was given by the applicant from first proceeding for getting that loan, it cannot be said that applicant from first proceeding had no knowledge about the aforesaid loan transaction and he had not played any role.

10] In view of the nature of the allegations made by the Bank against Sunil Patil which are quoted above, it can be said that the Bank had knowledge that the loan was being disbursed in favour of the institution and the names of the employees were used by the educational institution. Due to this circumstances, it cannot be said that the employees of the Bank or Directors of the Bank were not involved in the fraud.

11] The learned counsel for the applicant from second proceeding submitted some of the applicants were not Directors on the date of sanction of loan. The loans were sanctioned and disbursed on different dates. There are list showing the period of the Directors and from the list it can be said at this stage that the applicants were Directors at the relevant time. However, it will be open to the investigating agency to find out as to who was not party to sanction of loan or disbursement of loan. The investigating agency has statutory powers to submit report under Section 169 of the Code of Criminal Procedure or filing case. In view of this, this Court hold that no relief can be given to the applicants from both the proceeding. In the result both the applications stand dismissed.

Rule is discharged.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

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