

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

Criminal Application No.1279 of 2008

- 1) Sanjay s/o Vasudeo Naik,
Age 45 years,
Occupation: Service as a
Managing Director of Sahakar
Mitra Chandrakant Hari Badhe Sir
Urban Cooperative Credit
Society, Varangaon,
R/o Varangaon, Taluka Bhusawal,
District Jalgaon.
- 2) Chandrakant s/o Hari Badhe,
Age 60 years,
Occupation: Chairman of
Sahakar Mitra Chandrakant
Hari Badhe Sir Urban Cooperative
Credit Society, Varangaon,
R/o Varangaon, Taluka Bhusawal,
District Jalgaon. **.. Applicants.**

Versus

- 1) The State of Maharashtra
Through Police Inspector,
City Police Station Jalgaon,
Taluka & District Jalgaon.
- 2) Krushna s/o Namdeo Patil,
Age 58 years,
Occupation: Doctor,
R/o 31, Housing Society,
Pimprala Road, Jalgaon,
Taluka & District Jalgaon.
- 3) Jitendra s/o Madhukar Narkhede,
Age 28 years, Occupation: Business,
R/o Bhikamchand Jain Nagar,
Jalgaon, Taluka & District Jalgaon. **.. Respondents.**

Shri. Vijay B. Patil, Advocate, for applicants.

Shri. S.J. Salgare, Additional Public Prosecutor, for respondent No.1.

Shri. A.G. Talhar, Advocate, holding for Shri. D.B. Dhoke, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 24 JULY 2018

JUDGMENT: (Per T.V. Nalawade, J.)

1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of R.C.C. No.436/2007 filed before learned Chief Judicial Magistrate, Jalgaon for offences punishable under sections 405, 468, 471, 420, 120B, 34 etc. of the Indian Penal Code. The case is filed in Case No.M-3/2008 registered with City Police Station Jalgaon. Both the sides are heard.

2) The private complaint was filed by present respondent No.2 against the applicants in the Court of Judicial Magistrate First Class Jalgaon. He has made allegations against present applicants that offence is

committed by applicant No.1 in the capacity of Manager of Cooperative Credit Society Limited Varangaon and offence is committed by applicant No.2 in the capacity as Chairman of the said Society. He has made allegation that applicants had joined hands with present respondent No.3 and false record was created against the complainant to the effect that to the loan taken by present respondent No.3-Jitendra Narkhede, the complainant had stood surety. Allegation is made that all the signatures were made by original accused No.1 and accused No.1 committed forged documents and this could happen only because present applicants had joined hands with accused No.1.

3) Loan was given to accused No.1- Jitendra but it was not repaid by accused No.1. As the debtor committed default, proceeding under section 101 of Maharashtra Cooperative Societies Act was started and certificate was given by competent authority in favour of the Society. The decision of the authority was challenged by filing various proceedings but the respondent No.2 could not get any relief and the certificate has attained the finality.

4) In the past a private complaint was filed by present respondent No.2 bearing R.C.C. No.222/2006 against only present applicants. Order of investigation under section 202 of the Cr.P.C. was made by the learned Magistrate. Police made investigation and submitted report to the effect that no case was made out by the complainant and the record was probably bearing his signatures. The specimen signature and the disputed signature were sent to handwriting expert and on that basis report was submitted by police. Opportunity was given to the respondent No.2 to have his say in respect of the said report. Even when there was such report respondent No.2 preferred not to give evidence in support of his allegations. He filed pursis to that effect and then the Chief Judicial Magistrate dismissed the complaint under the provisions of section 203 of the Cr.P.C. This order was challenged by the respondent No.2 by filing Criminal Writ Petition No.454/2007. Copy of the order produced shows that before this Court statement was made that one Jitendra had done the mischief but he was not arraigned as accused and submission was made that the complainant wanted to file fresh complaint. Due to

such statement, the petition came to be disposed of as withdrawn.

5) The aforesaid circumstances show that on one hand the certificate issued under section 101 of the Maharashtra Cooperative Societies Act has become final and on the other, the circumstances show that previous private complaint filed against the present applicants came to be dismissed after making inquiry by police under section 202 of the Cr.P.C. In the case reported as **2003(3) ALL M.R. 393 (Vasundhara Ashokrao Patil v. Rajaram Bapu Sahakari Bank Ltd.)** this Court has made it clear that the certificate under section 101 becomes final after following the procedure given to challenge such certificate. The circumstances show that only when respondent No.2 lost the battle in respect of the certificate he approached criminal court by filing Case No.222/2006. The said complaint came to be dismissed.

6) Learned counsel for respondent No.2 placed reliance on the observations made by the Apex Court in the case reported as **AIR 2007 SC 702 (Mahesh Chand v.**

B. Janardhan Reddy) and submitted that fresh complaint on the same incident is tenable. The observations in that regard can be found in paragraph 14 and they are as under.

"14. . . . Therefore, if he has not misdirected himself as to the scope of the enquiry made under section 202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under section 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. *Allah Ditta v. Karam Baksh*, *Ram Narain Chaubey v. Panachand Jain*, *Hansabai v. Ananda*, *Doraisami v. Subramania*. In regard to the adducing of new facts for the bringing of a fresh complaint the special bench in the judgment under appeal did not accept the view of Bombay High Court or the Patna High Court in cases above quoted and adopted the opinion of Macleam, C.J. in *Queen Empress v. Dolegobinda Das* affirmed by a full bench in *Dwarka Nath Mandal v. Beni Madhab Banerji*. It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming."

7) The aforesaid observations made by the Apex Court show that for filing fresh complaint, complainant needs to show to the court manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence was forthcoming. Learned counsel for the respondent No.2 submitted that the previous case was filed as against only present applicants and now third accused is joined in the matter and so the matter needs to be investigated. The submissions made show that the complainant wants to prove that it is accused No.1 of the present matter who has committed the offence of forgery. No allegations are made as against present applicants of forgery but submission is made that due to the posts which they were holding at the relevant time inference is possible that they had joined hands with the debtor and also the other accused. Such submission cannot be accepted. In the past also police had sent the specimen handwriting of the respondent-complainant along with disputed signature and police formed opinion that there was no creation of false record and the respondent-complainant had stood surety in the transaction. In view of the aforesaid circumstances and the report filed by

police on the basis of investigation made, this Court holds that reopening of the matter is not possible and that will cause unnecessary harassment to the present applicants. This Court holds that at least in respect of the present applicants it can be said that the complaint does not fall under any of the three grounds mentioned by the Apex Court in the case of Mahesh Chand (cited supra). In the result, following order.

8) Criminal application is allowed. Relief is granted in terms of prayer clause (C). Rule is made absolute in the aforesaid terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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