IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1624 OF 2015

1. Shri. Bapurao s/o. Madhavrao Patil,
Age Major, Occu. Agriculture,
R/o. Murum, Tal. Omerga,
Dist. Osmanabad

2. Sunil s/o. Madhukar Chavan,
Age Major, Occu. Agriculture,
R/o. Andur, Tal. Tuljapur,
Dist. Osmanabad.

3. Narayan Kisanrao Samudre,
Age Major, Occu. Agriculture,
R/o. Dhoki, Tal. and District
Osmanabad.

4. Dnyaneshwar Raosaheb Patil,
Age Major, Occu. Agril.,
R/o. Paranda, Ta. and Dist.
Osmanabad.

5. Smt. Anandidevi Bupalsingh
Rajenimbalkar, Age Major,
Occu. Agri. & Household,
R/o. Gowardanwadi, Ta. and
Dist. Osmanabad.

6. Shivaji Jaiwantrao Sawant,
Age Major, Occu. Business,
R/o. Shivajinagar, Sonari,
Tal. Paranda, Dist. Osmanabad.

7. H.V. Bhusare,
Age Major, Occu. Service,
R/o. Osmanabad, Ta. & District
Osmanabad **....Applicants.**

Versus

1. The State of Maharashtra
Through in-charge Osmanabad
City Police Station, Dist. Osmanabad.

2. District Deputy Register,
Osmanabad. ....Respondents.

Mr. V.D. Sapkal Advocate h/f. Mr. L.C. Patil, Advocate for applicants.
Mr. S.J. Salgare, APP for respondent Nos. 1 and 2.

CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 31/08/2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1. The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 10/2011 registered with Osmanabad City Police Station, District Osmanabad. The crime is registered for offences punishable under section 406, 409, 420, 466, 467, 468, 471, 120-B of Indian Penal Code. Both the sides are heard. The first informant is dead and the death certificate in respect of first informant is produced.

2. The crime is registered on the basis of directions given for investigation under section 156 (3) of Cri.P.C. in Cri. M.A. No. 656/2014. The said proceeding was filed by Nanasaheb Jadhaver, who was Director of Osmanabad District Central Co-operative Bank, Osmanabad. Applicant Nos. 1 to 6 were also Directors of this bank and applicant No. 7 was Deputy Chief Executive Officer and he was working as incharge on the post of Chief Executive

Officer of the Bank at the relevant time.

3. The relevant facts about the allegations and other circumstances on which the prosecution would be relying and the applicants would be relying can be stated as follows :-

(I) To take loan of Rs.10 Crore, the Managing Body of Terna Co-operative Sugar Factory from Osmanabad District had passed resolution on 15.7.2011. As per the resolution, the amount of Rs. 10 Crore was required for season 2011-12 and decision was taken to take loan as short term loan. In this resolution, it was mentioned that the amount was required for setting up of machinery for cutting and transportation of sugarcane for crushing season. In the resolution, the Managing Committee also considered the expected expenditure which was put up as a note by the office for electricity bills and for payment of salary of employees of factory etc.

(II) On 9.9.2011 Terna Sugar Factory applied for loan of Rs. 9 Crore to the aforesaid bank. It was submitted by Terna Factory that the amount was required for repairs of machinery of factory, for maintenance of machinery, for doing work of sugarcane cutting and transportation of sugar for season 2011-12 etc. It was specifically informed that the amount of Rs. 2.5 Crore was required for payment of wages of the employees of the factory and for payment of bills of electricity which the factory was expected to pay during ensuing season. The amount of Rs.20 lakh was mentioned as routine season's expenditure.

(III) After scrutiny of the proposal by the then Managing Director of District Bank, he put up office note before the applicants and took many objections to the sanction of loan. This Managing Director was on deputation to this factory and he was sent by State level bank. The objections were as follows :-

(a) As per the bye-law No. 5 of Terna Sugar Factory, taking any loan in the situation which Terna Factory was facing was not possible. Accumulated loss of this factory was huge in comparison to the paid up capital and reserve funds. Due to these circumstances, it was necessary for the sugar factory to obtain permission of registering authority under Maharashtra Co-operative Societies Act. In the note, it was specifically mentioned that the total accumulated loss till that year was Rs. 265.42 Crore. Net deposit at resources was (minus) - Rs. 61.53 Crore. The net-worth was Rs. 236.27 Crore. In audit of sugar factory done in the year 2006, 'C' Class was given to this sugar factory and after the year 2006, no audit of this factory was done.

(b) As on 31.8.2018 the sugar factory was in dues of Rs.127.31 Crore towards the principle amount and Rs.57.83 Crore towards interest on loan given by the District Bank. The sugar factory had already committed default in repayment of loan and defaulted amount was more than Rs. 39.8 Crore.

(c) As per the guidelines of National Bank for Agriculture and Rural Development (NABARD) and in view of the aforesaid circumstances no more loan could have been given to such factory by the bank.

(d) The sugar factory had additional liabilities

(i) Government dues of Rs. 17.49 Crore,

(ii) Dues towards other institutions and bank of Rs. 194.07 Crore,

(iii) Other dues of Rs.102.36 Crore.

Thus, the other liabilities of the bank was more than Rs. 313.93 Crore. It is already mentioned that the loan which was to be repaid to the District Bank was more than Rs. 180 Crore.

(e) In the past on security of goods sugar, loan was given from the years 2008-09, 2009-10 & 2010-11 but as per the agreement in the years 2009-10, 2010-11, the goods were not hypothecated to the bank by way of security. The sale proceeds of the goods were not credited in the District Bank and the factory had opened accounts in other banks like State Bank of India and State Bank of Hyderabad etc. In this regard, the District Bank had given specific directions to Terna Factory to close all the accounts opened in other banks and to make transactions by using account from District Bank only, but that direction was not followed. No arrangement was made by the Sugar Factory for repayment of loan which was already due and no promise was given in the new proposal about the outstanding dues.

(f) The sugar factory had not done compliance of the conditions already put by the District Bank for taking previous loans including the long term loans. No security was given.

(g) Already loan of Rs. 14 Crore was taken by the sugar factory from Buldhana Urban Bank in the season and for that, no objection certificate of District Bank was not obtained.

(h) As huge amount of loan was already due from the sugar factory and the bank was required to show the entire amount in NPA (Non Performing Assets) of the District Bank, there was no possibility of repayment of the new loan and there was probability that in future, the new loan would be required to be shown as NPA. Already notice of 60 days was given to sugar factory under the Secularization Act, 2002. No response was given to this notice. In crushing season of 2010-11 no amount was paid by the sugar factory to the bank for repayment of the loan and no immovable property was given by mortgage to comply the previous conditions.

(IV) In meeting dated 24.10.2011 the accused persons considered the aforesaid objections raised by the Managing Director to the proposal. It was specifically pointed out to the accused that bank may face problem to obtain banking permission from Reserve Bank of India (RBI) due to increase of NPA. Even when there were these circumstances, the applicants took the decision to sanction the loan. The applicants gave reason that it was necessary to enable the sugar factory to go for ensuing crushing season and only after that previous loan could have been recovered. It was observed that the conditions can be put to execute the mortgage document of the property of sugar factory and condition can be put to direct the sugar factory to credit sale proceeds in District Bank and close the accounts which sugar factory had opened in other banks. The decision was taken to charge interest at the rate of 14% p.a. The record and the submissions show that neither of these conditions were fulfilled. The sale proceeds were not credited for repayment of the present loan, the accounts in other banks were not closed and the dues afterwards crossed over Rs. 300 Crore.

(VI) Two Directors of District Bank like Suresh Birajdar and Rahul Patil had taken objections to sanction of loan in the meeting dated 24.10.2011 and by way of precaution, they had put their objections in writing. Such record is produced and it bears endoresement of the bank which is of acknowledgment of receipt of the objection.

(VII) On 25.11.2011 the sugar factory executed mortgage document of its land Gat No. 242 admeasuring 37.53 H. for loan of Rs. 7 Crore. When loan of Rs. 9 Crore was shown to be sanctioned and there was huge loan of previous transactions, the property was given for security of only Rs. 7 Crore. However, in this document, the rate of interest was mentioned as 14% and it was shown that it was short term loan and it was to be repaid prior to 28.2.2012. On 30.10.2011 one more document of mortgage in respect of land Gat No. 242 was executed by the sugar factory and it was shown that the mortgage was for additional amount of Rs. 2 Crore as loan sanctioned was of Rs. 9 Crore. These circumstances create doubt about the record created by the District Bank.

(VIII) From 28.10.2011 the regular Managing Director of District Bank, who had taken aforesaid objections stopped turning up to the bank and he informed in writing that he had no intention to continue to work with this bank. On 29.10.2011 Bhusare, accused No. 7, who was already working as Deputy Chief Executive Officer of the Bank was asked to work in place of previous Managing Director. One Shri. Bhutkar was the Managing Director.

(IX) The record produced by the applicants show that on 14.9.2011 resolution was passed by Terna Sugar Factor, the Managing Committee that it was in need of some money and so, loan was to be taken from Bhairavnath Sugar Works, private sugar factory. It was mentioned in the resolution that if the amount was made available by the District Bank, the said amount was to be diverted to Bhairavnath Sugar Factory. The submissions made show that Bhairavnath Sugar Factory had also applied for loan to District Bank at the relevant time. But, it was not sanctioned. Investigation in to these aspects is required. It was not possible for Terna Factory to take such loan as there were aforesaid restrictions on it. No record like correspondence is produced in this regard. Further, such representation was not made and could not have been made by Terna Factory to District Bank for getting loan.

(X) Account statements of Terna Sugar Factory is produced. It shows that on 24.9.2011 the amount of Rs. 2 Crore was transferred by Bhairavnath Sugar Factory to Terna Factory by R.T.G.S. mode. On 18.10.2011 amount of Rs. 1 Crore was again given and on 18.10.2011 the amount of Rs. 50 lakh was given by R.T.G.S. mode. On 2.11.2011 amount of Rs. 1 Crore was transferred in the account of Terna Factory from the account of Bhairavnath Factory. Thus, amount of Rs. 4.5 Crore was shown to be given by Bhairavnath Factory to Terna Factory. It needs to be mentioned here that on 31.10.2011 itself the loan was disbursed by the District Bank in favour of Terna Factory and so, it was not necessary for Terna Factory to make payment of Rs. 4.5 Crore to Bhairavnath Factory on 31.10.2011. These circumstances show that things were manipulated. There are many surprising and shocking circumstances which can be gathered from account statements of Terna Sugar Factory. It is only a part of account statements of some limited period and it shows that by cheque, the amount of Rs. 75 lakh was given from the account of Terna Factory on 2.11.2011 to Pavanraje Nimbalkar. By cheque, the amount of Rs. 1 Crore was given to Pavanraje Nimbalkar on 3.11.2011. By cheque, the amount of Rs. 2.5 Crore was again given to Pavanraje Nimbalkar and the amount of Rs. 1 Crore was given on 4.11.2011 to Pavanraje Nimbalkar. Here only it needs to be mentioned that accused No. 5, who was Chairman of the District Bank is the wife of said Pavanraje Nimbalkar. On record, his name is shown as Pavanraje alias Bhupalsingh. Submission was made by the learned APP that from 1996 to 2002, Pavanraje Nimbalkar himself was the Chairman of District Bank and at the relevant time also, he was controlling the District Bank. There is force in this submission as the wife of Pavanraje Nimbalkar was the Chairman of District Bank at the relevant time. It was also submitted that there was control of Pavanraje Nimbalkar, who was worker of political party Shiv-Sena over Terna Cooperative Sugar Factory also and only due to that, aforesaid things happened. In view of the aforesaid circumstances, this Court holds that there is much force in the submissions made by the learned APP against the present applicants.

(XII) The correspondence of District Bank dated 31.10.2011 with Terna Factory shows that Terna Factory was asked to comply the conditions which were shown in sanction letter. On 31.10.2011 the Directors of District Bank as per routine gave undertaking in respect of the loan to the Bank.

(XIII) There is copy of submission of the staff of District Bank dated 31.10.2011 showing that the conditions which were shown in the resolution by Managing Committee of District Bank were not complied with by Terna Sugar Factory. Even when there were such circumstances, the Chairman of District Bank directed to disburse the amount of Rs. 4.5 Crore in favour of Terna Factory and asked staff to see that before disbursing the remaining amount, steps are taken to see that the conditions are fulfilled. Thus, even when there were aforesaid circumstances, the Chairman herself gave direction of the aforesaid nature and the amount ultimately went to her husband. It can be said that the other Directors, the applicants were also responsible and they had played active part in giving amount to Terna Factory which ultimately went to Pavanraje Nimbalkar. They became party to sanction of the loan when there were serious objections to sanction the loan of aforesaid nature.

(XIV) The record produced shows that on 31.10.2011 draft of amount of Rs. 4.5 Crore in favour of Bhairavnath Factory, private factory was given by the District Bank on the request made by Terna Factory. Thus, it is not open to the applicants to say that the amount was given behind their back to Bhairavnath Factory. The draft of Rs. 4.5 Crore was given by Terna Factory to Bhairavnath Factory on 31.10.2011. The transactions of giving money to Pavanraje Nimbalkar are already mentioned and they were made after getting the loan amount from District Bank.

4. The learned counsel for applicants submitted that afterwards Terna Factory repaid the aforesaid short term loan. It appears that only after registration of crime the amount was repaid. Surprisingly, nothing was paid in respect of old dues and the amount was accepted only in respect of present transaction and certificate was issued in favour of Terna Sugar Factory that there were no dues. These circumstances were then used in inquiry made u/s. 88 of Maharashtra Co-operative Societies Act. The authority considered these circumstances and reported that it was not advisable to go for further action against the applicants. The aforesaid other relevant circumstances were not at all

considered by the inquiry authority. It was submitted by the learned counsel for applicants that when the officer, who made inquiry under section 88 of Cooperative Societies Act has given such report, the applicants are entitled to get the relief.

5. The aforesaid submission made by the learned counsel for applicants is not at all acceptable. It can be said that there is misconception that inquiry under section 88 Cooperative Societies Act is condition precedent for ascertaining the criminal liability. Secondly, the report of inquiry officer given under section 88 cannot bind any court including the Criminal Court. As the purpose behind such inquiry is totally different, this Court holds that the proposition made by the learned counsel for applicants cannot be accepted. It is already mentioned that the inquiry officer did not consider the relevant circumstances and he gave report in favour of the applicants only on the basis of certificate issued by the District Bank itself which was under control of present applicants. This Court has no hesitation to observe that in this State the provision of section 88 is being used not for fastening liability, but for covering up the things like present one. The aforesaid conduct of the applicants was not simply irregularity, but it indicates that there was conspiracy and by taking aforesaid steps, the amount of sugar factory was given to private party who had control over both

District Bank and Terna Factory. In such cases, the higher authority needs to take action even against the officer who conducted inquiry under section 88 of the Maharashtra Cooperative Societies Act.

6. The aforesaid facts and circumstances apparently show that there was conspiracy hatched by the present applicants and Pavanraje Nimbalkar. The amount taken by Terna Factory, one cooperative institution from District Cooperative Bank was diverted to private sugar factory. There is need to make investigation to ascertain connection of these influential persons with Bhairavnath Factory and those persons can also be criminally held liable in view of the indirect defences taken by the present applicants. If there is material, it will be open to police to make them as accused by using provision of section 120-B of IPC.

7. There are more circumstances showing that the District Bank acted with aforesaid intention. When interest agreed was 14% p.a., the certificate issued by the Bank of repayment shows that agreed interest was 10.96%, but concession was given of 0.96% and accordingly, the interest was recovered. This Court holds that this circumstance is also relevant circumstance and it is not considered by the officer who made inquiry under section 88

of Cooperative Societies Act. Investigation in to that aspect also needs to be made. This Court holds that no relief can be granted in favour of the applicants in view of the aforesaid circumstances. In the result, following order is made :-

O R D E R

(I) The application is dismissed. Interim relief is vacated. Rule is discharged.

(II) The learned counsel for applicants requested for continuation of interim relief. That request is refused.

[SMT. VIBHA KANKANWADI, J.] **[T.V. NALAWADE, J.]**

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