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

CRIMINAL APPICATION NO. 1428 OF 2005

1. Shri. Mansuklal Motilal Jain,
Age 61 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

2. Sow. Mandakini Ramesh Yewale,
Age 42 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

3. Shri. Anil Laxminiwas Baheti,
Age 40 years, Occu. Business,
R/o. Girad, Tq. Bhadgaon,
Dist. Jalgaon.

4. Shri. Nivrutti Pralhad Amatkar,
Age 35 years, Occu. Business,
R/o. Kajgaon, Tq. Bhadgaon,
Dist. Jalgaon.

5. Shri. Subhash Chudman Patil,
Age 45 years, Occu. Business,
R/o. Wadji, Tq. Bhadgaon,
Dist. Jalgaon.

6. Shri. Sahebrao Ragho Mahajan,
Age 45 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

7. Shri. Subhash Trilokchand Jain,
Age 55 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

8. Shri. Hari Raghunath Patil,
Age 55 years, Occu. Business,
R/o. Bambarud, Tq. Bhadgaon,
Dist. Jalgaon.

9. Shri. Sudhakar Pundlik Patil,
Age 40 years, Occu. Business,

R/o. Bambarud, Tq. Bhadgaon,
Dist. Jalgaon.

10. Shradha Sharadkumar Moharir,
Age 52 years, Occu. Household,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

11. Shri. Baliram Ganpati Jadhav,
Age 65 years, Occu. Pensioner,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

12. Shri. Govind Nathu Junagade,
Age 60 years, Occu. Service,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon. **....Applicants.**

Versus

1. The State of Maharashtra
through the Public Prosecutor
High Court Bench at Aurangabad.

2. Shri. Sanjay Ramesh Amrutkar,
Age 32 years, Occu. Driver,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon. **....Respondents.**

Mr. P.P. Chavan, Advocate for applicants.

Mrs. P.V. Diggikar, APP for respondent No. 1/State.

Mr. V.B. Patil, Advocate for respondent No. 2.

WITH
CRIMINAL APPLICATION NO. 1429 OF 2015

1. Shri. Mansuklal Motilal Jain,
Age 61 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

2. Sow. Mandakini Ramesh Yewale,
Age 42 years, Occu. Business,

R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

3. Shri. Anil Laxminiwas Baheti,
Age 40 years, Occu. Business,
R/o. Girad, Tq. Bhadgaon,
Dist. Jalgaon.

4. Shri. Nivrutti Pralhad Amrutkar,
Age 35 years, Occu. Business,
R/o. Kajgaon, Tq. Bhadgaon,
Dist. Jalgaon.

5. Shri. Subhash Chudman Patil,
Age 45 years, Occu. Business,
R/o. Wadji, Tq. Bhadgaon,
Dist. Jalgaon.

6. Shri. Sahebrao Ragho Mahajan,
Age 45 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

7. Shri. Subhash Trilokchand Jain,
Age 55 years, Occu. Business,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

8. Shri. Hari Raghunath Patil,
Age 55 years, Occu. Business,
R/o. Bambarud, Tq. Bhadgaon,
Dist. Jalgaon.

9. Shri. Sudhakar Pundlik Patil,
Age 40 years, Occu. Business,
R/o. Bambarud, Tq. Bhadgaon,
Dist. Jalgaon.

10. Shradha Sharadkumar Moharir,
Age 52 years, Occu. Household,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

11. Shri. Baliram Ganpati Jadhav,
Age 65 years, Occu. Pensioner,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon.

12. Anil Prakash More,
Age 35 years, Occu. Service,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon. **....Applicants.**

Versus

1. The State of Maharashtra
Through the Public Prosecutor
High Court Bench at Aurangabad.

2. Shri. Sanjay Ramesh Amrutkar,
Age 32 years, Occu. Driver,
R/o. Bhadgaon, Tq. Bhadgaon,
Dist. Jalgaon. **....Respondents.**

Mr. P.P. Chavan, Advocate for applicants.

Mrs. V.C. Choudhary, APP for respondent No. 1/State.

Mr. V.B. Patil, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE AND K.L. WADANE, JJ.
DATED : 02/08/2018.

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

1) Both the proceedings are filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. On the basis of directions given by the learned Judicial Magistrate, First Class, Bhadgaon, District Jalgaon the crime are registered. The proceeding like RCC No. 74/2004 was filed by present respondent No. 2 Sanjay Amrutkar for the offences punishable under sections 406, 409, 420, 477A and 34 of Indian Penal Code and RCC No. 76/2004 was filed for offences punishable under sections 392, 445, 448, 452, 504, 34

etc. of IPC.

2) In the first proceeding, allegations are made by the complainant that the present applicants who are Chairman and Directors of one credit cooperative society had illegally made some recovery from him by using force and they used Gunda persons for recovery. Three incidents of recovery of amount of Rs.500/- on each instance are mentioned and contention is made that illegally some amount was taken in the name of surcharge in respect of amount spent on recovery.

3) In the second proceeding, allegations are made that on 19.8.2004 the accused of that case had forcibly taken away the trax vehicle in the presence of wife of the complainant. Allegations are made that when the key was not available, they broke open the lock of the trax vehicle and damage was caused to his property like door of his house.

4) The submissions made and the record show that it is not disputed that the complainant had taken loan from this credit society. It is also not disputed that when the loan of more than Rs. two lakh was taken in the year 2001, he had committed default and as on 30.4.2004 the amount of Rs.2,84,000/- was due from the

complainant. Copy of agreement of hire purchase made by the complainant with the Society is produced and it shows that under the agreement, the Society was given right to repossess the vehicle, if default was committed by the complainant in making the payment of installments. It is true that some amount was claimed as surcharge as the amount spent for recovery, but that need not be considered in the present matters in view of the nature of allegations made by the complainant.

5) It was submitted for the complainant that proper procedure ought to have been followed by the management of the society and they ought to have obtain certificate under Maharashtra Cooperative Societies Act and only by using those provisions, they could have taken the possession of the vehicle.

6) On this point, the learned counsel for applicants placed reliance on observations made by the Apex Court in the cases reported as **AIR 2001 SC 3721 [Charanjit Singh Chadha Vs. Sudhir Mehra], LEX (SC) 2012 1075 [Anup Sharma Vs. Bhola Nath Sharma], LEX (BOM) 2013 587 [Khan Hasib Ibrahim Vs. Suresh Haribhau Kapare], LEX (SC) 2009 831 [M.N. Ojha Vs. Alok Kumar Srivastav]**. On the other hand, the learned APP submitted that guidelines are given by Apex Court which need to be

followed by the creditor bank. He placed reliance on the case reported as **(2007) 2 Supreme Court Cases 711 [ICICI Bank Ltd. Vs. Prakash Kaur and Ors.]**. He submitted that Reserve Bank of India has also issued some guidelines which need to be followed. In subsequently decided case by the Apex Court in the year 2012, the Apex Court has considered the rights of such banks given under the agreement and Apex Court has observed that taking the custody of the vehicle cannot amount to offence of theft as the bank is owner and the person to whom the vehicle is given under hire purchase agreement, is at the most trustee or bailee of the financier.

7) The law discussed by the Apex Court and this Court show that whenever there is agreement allowing the finance company, creditor to repossess the vehicle in case of default, the finance company can exercise the right provided that procedure is followed. In the present matters, though there is allegation that proper procedure was not followed and subsequently the authority under Maharashtra Cooperative Societies Act directed the creditor society to return the vehicle, the fact remains that the complainant was defaulter and aforesaid big amount was due from complainant. Ordinarily, when the officers, employees of the creditor come for recovery, the custody is given readily, but subsequently the complaint is made to pressurise the employees and office bearers of

the creditor. The submissions made show that by using pressure tactics further installments were also not paid. This conduct and approach of the complainant cannot be ignored. It can be said that the complainant was not ready to repay the loan and for that, he wanted to use the pressure tactics. Both the proceedings have arisen out of the aforesaid dispute. This Court holds that it will be abuse of process of law if the applicants who are office bearers and employees of the credit society are asked to face the trial in the aforesaid proceedings. In the result, both the applications are allowed. Relief claimed in both the cases of quashing of aforesaid orders made by the J.M.F.C., Bhadgaon in private complaints is granted and the proceedings, if any, filed against the applicants are also quashed. Rule is made absolute in those terms.

[K.L. WADANE, J.] **[T.V. NALAWADE, J.]**

ssc/