

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

CRIMINAL WRIT PETITION NO. 1138 OF 2015

- 1) Pramod Bhaichand Raison,
Age: Major, Occu: Business,
R/o: Pratap Nagar, Near Anglo Urdu School,
Jalgaon.
- 2) Dilip Kantilal Chordiya,
Age: Major, Occu: Business,
- 3) Motilal Omkar Jiri,
Age: Major, Occu: Business,
- 4) Surajmal Bhabhutmal Jain,
Age: Major, Occu: Business,
- 5) Dada Ramchandra Patil,
Age: Major, Occu: Business,
- 6) Bhagwat Sampat Mali,
Age: Major, Occu: Business,
- 7) Rajaram Kashinath Koli,
Age: Major, Occu: Business,
Petitioner Nos. 2 to 7
R/o Talegaon, Taluka: Jamner,
District: Jalgaon.
- 8) Bhagvan Hiraram Wagh,
Age: Major, Occu: Business,
R/o: Shelgaon, Taluka: Jamner,
District: Jalgaon.
- 9) Dr. Hitendra Yashvant Mahajan,
Age: Major, Occu: Business,
R/o: Anand Homeopathic Clinic,
10 Rajnigandh Complex, Jalgaon.
Taluka and District: Jalgaon.
- 10) Indrakumar Aatmaram Lalwani,
Age: Major, Occu: Business,
R/o: 66, 67, TM Nagar, Sindhi Colony,

District: Jalgaon.

11) Yashwant Omkar Jiri,
Age: Major, Occu: Business,
R/o: Shelgaon, Taluka: Jamner,
District: Jalgaon.

12) Ramjan Abdul Nabi,
Age: Major, Occu: Business
R/o Talegaon, Taluka: Jamber,
District: Jalgaon.

...Petitioners

Versus

1) The State of Maharashtra
Through the Sakri Police Station
Taluka: Sakri; District: Dhule.

2) Bhalchandra Govind Kothawade,
Age: 67 Years; Occu: Businessman
R/o: Sakri City, Survey No. 980, 981,
Taluka: Sakri, District: Dhule.

3) STATE OF MAHARASHTRA THROUGH
STATE CID, PUNE, PUNE

...Respondents.

Mrs. Rashmi S. Kulkarni, Advocate for Petitioners.

Mr. A.A. Jagatkar, APP for Respondent Nos. 1 and 3/State.

Mr. S.U. Chaudhari, Advocate for Respondent No. 2.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 19/11/2018.**

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

1) The petition is filed for relief of quashing and setting aside the F.I.R. No. 40/15 registered with Sakri Police Station, District Dhule for offences punishable under sections 409, 420 r/w.

120-B of Indian Penal Code and section 3 of the Maharashtra Protection of Interest of Depositors Act (for short 'MPID Act'). Heard both the sides.

2) The crime is registered on the basis of report given by respondent No. 2, who had kept some amount in fixed deposit with Bhaichand Rasoni Cooperative Credit Society which is having Head Office at Jalgaon, Maharashtra. Petitioner No. 1 Pramod is founder Chairman of the society and petitioner No. 2 Dilip was Chairman at the relevant time. Petitioner No. 3 Motilal was Vice Chairman at the relevant time and other petitioners were directors of the society. The report is given against the Manager, General Manager, Cashier and Branch Manager also.

3) Different schemes of fixed deposits were published by the aforesaid society and the deposits were invited. Attractive offer of 13% rate of interest on fixed deposit for the period of one year was given. The first informant deposited the amount in his own name and in the name of his wife initially for the period of one year in the year 2014. When the deposits became mature, he approached the society for getting back the amount deposited, but the amount was not returned and evasive answers were given by the petitioners.

Notice was given by the first informant and then report was given to police on 11.4.2015. The submissions made show that more than 84 similar F.I.Rs. are given against the petitioners. The amount due to the depositors is huge and there is allegation that fraud was committed by the petitioners and due to that, the society is not in a position to return the amount of depositors. Steps were taken to attach the property of society situated at Akola district by using provisions of MPID Act. One Writ Petition No. 503/2015 was filed in other crime for similar relief, but it came to be rejected.

4) When there are aforesaid circumstances, the learned counsel for petitioners submitted that present F.I.R. needs to be considered separately. She submitted that hardly the amount of Rs. 1.6 lakh of the first informant was involved and the possibility of mismanagement and absence of intention is there. Such submission cannot be accepted. The petitioners are kept behind bars due to material collected by police in respect of the fraud committed in the society.

5) The learned counsel for petitioners argued on one technical point. She submitted that the aforesaid society cannot fall under the definition of 'financial establishment' given in section 3 of

MPID Act and so, the provision of MPID Act cannot be invoked against the institution and the petitioners. This submission is also not acceptable. This Court has considered such defence in **Criminal Application No. 5130/2017 decided at this bench [between Shridhar s/o. Udhav Kolpe and Anr. Vs. The State of Maharashtra and Ors.] decided on 3.9.2018.**

6) This Court has held that Multi-State Cooperative Society is covered by the definition of 'financial institution' given in section 3 of the MPID Act. This Court had considered the ratio laid down in the case reported as **AIR 2013 (supp) 816 [Soma Suresh Kumar Vs. Government of Andhra Pradesh and Ors.]**. The Apex Court has compared the provisions of similar Act made in Andhra Pradesh. In view of the provisions of Multi-State Cooperative Societies Act, 2002 also, the control remains with the members of the society as it is democratic institution created under the Act. Thus, there is no force in the ground raised by the learned counsel for petitioners in the present matter. It cannot be said that there is no material at all against the present petitioners to make out the case for aforesaid offences. A strange submission was made that each FIR needs to be considered separately and the previous decision cannot be used in the present matter. This submission is not acceptable and the fraud

committed as a whole needs to be considered by the Court.

7) The learned counsel for petitioners placed reliance on some observations made in the following cases.

(i) AIR 1962 SC 1764 [Shanti Prasad Jain Vs. Director of Enforcement Foreign Exchange Regulations Act.] (Para 37)

(ii) 2010 ALL SCR 2494 [Asoke Basak Vs. State of Maharashtra], (Para 14, 15, 18, 19, 22, 23, 24).

(iii) AIR 2001 SCW 4435 [S.W. Palnitkar Vs. State of Bihar], (para 10,11,12 and 14)

(iv) 2014 (1) Bom.C.R. (cri) 132 [Savda Merchant Co-op. Vs. State of Maharashtra]

(v) 2012 ALL MR (Cri) 2948 [Wainganga Gramin Bank Vs. State of Maharashtra] (Para 10 and 11)

(vi) (2000) 2 SCC 636 [G. Sagar Suri and Anr. Vs. State of U.P.],

(vii) (2016) 1 SCC 348 [IARC Vs. Nimra Cerglass Technics Pvt. Ltd.], (para 15, 16, 22, 23)

(viii) (2011) 11 SCC 412 [Thermax Ltd. And Ors. Vs. K.M. Jhony] (para 12, 13)

(ix) (2009) 14 SCC 696 [Dalip Kaur and Ors. Vs. Jagnar Singh and Anr.] (para 4,10,11, 12 and 13).

The facts and circumstances of each and every criminal case are

always different. The relevant facts of the present matter are already quoted by this Court. The observations made in the aforesaid cases are of not use to the petitioners. In the result, the petition stands dismissed. Rule is discharged.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/