

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1083 OF 2012

1. Digambar s/o Sakahhari Housare,
Age : 43 years, Occu. : Service,
R/o : Burdgaon road, near Sangle Hospital,
Ahmednagar.
2. Kiran s/o Kashinath Avhad,
Age: 34 years, Occu. : Service,
R/o : Tawalenagar, Aurangabad Road,
Aurangabad.

... **PETITIONERS**
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through the Police Station Officer,
Tofkhana Police Station, Ahmednagar.
2. Sanjay s/o Shivaji Dapse,
Age: 42 years, Occu. : Social Worker,
R/o : 1483, Vanjar Galli, Ahmednagar,
Dist. Ahmednagar.

... **RESPONDENTS**

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Mr. N. V. Gaware, Advocate for Petitioners.

Mrs. V. S. Choudhari, APP for Respondent No.1 / State.

Mr. G. A. Kulkarni, Advocate h/f Mr. Rajendra S. Deshmukh, Advocate for
Respondent No.2.

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 31st October, 2018.

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

. The proceeding is filed for relief of quashing of FIR No.381 of 2012, registered with Tofkhana Police Station, District Ahmednagar, for the offences punishable under Sections 420, 462, 471, 474 and 120-B read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 Crime is registered on the basis of report given by present Respondent No.2, Sanjay Dapse, who is contending that he is a social worker.

4 During arguments, when this Court expressed that this Court is not inclined to grant relief in favour of Petitioner No.2, Kiran Avhad, learned counsel for this Petitioner, on instructions, submitted that he wants to withdrawn his proceeding. So, the proceeding of Petitioner No.2, Kiran Avhad, is disposed of as withdrawn.

5 Petitioner No.1 was working as Joint Registrar in

Divisional Office of Co-operative Societies. There are allegations against him that he helped the main Accused, who were in the management of Ahmednagar Central Co-operative Consumers Wholesale and Retail Stores Limited Co-operative Society and due to that, action was not taken against the management and others, who had misappropriated the property of the society. In audit, irregularities were noticed and action was taken by the Co-operative Department to dissolve the managing body and give management to the Administrator. Petitioner No.2, Kiran Avhad was appointed as Administrator. He was expected to take action after taking charge, but from 5th May, 2012, he did not take any action and he avoided to take even charge by giving lame excuses. Allegations are made against Petitioner No.1 that communication was made with him on 22nd June, 2012 and 19th July, 2012 for taking action against previous management like giving report to police but no action was taken.

6 In the papers of investigation, there is no record of aforesaid communication made with Petitioner No.1. It appears that the appointment of Administrator was challenged before him and the matter came before him in the capacity of Divisional Joint Registrar

and in that proceeding, he granted stay to the appointment on 12th June, 2012. Submissions were made that subsequently, other Joint Registrar vacated that interim relief. However, submissions were made that the matter was taken to the State Government and the State Government granted stay to the appointment of Administrator. Thus, at present, there is record to show that in the capacity as Joint Registrar and under powers given to him under Maharashtra Co-operative Societies Act, he had used discretion and given interim relief in the matter filed by the Accused. Only due to this circumstance, it cannot be inferred that he had joined hands with main Accused persons. In view of these circumstances, this Court holds that relief needs to be granted to Petitioner No.1, Digambar Housare. In the result, the following order is passed:

ORDER

- I. The proceeding of Petitioner No.2, Kiran Avhad is disposed of as withdrawn.
- II. The proceeding of Petitioner No.1, Digambar Housare is allowed.

III. Relief is granted to Petitioner No.1, Digambar Housare in terms of prayer clause (B).

IV. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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