IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 12 OF 2019

Shri. Raosaheb S/o. Mango Patil,
Age 49 years, Occ. Service,
R/o. Gunjan Bungalow, Behind Samrat Hotel,
Amalner, Tq. Amalner, District Jalgaon. PETITIONER

VERSUS

1] The State of Maharashtra,
Through Its Secretary,
Home Department, Mantralaya,
Mumbai – 32.

2] The Police Sub-Inspector,
City PoliceStation, Jalgaon,
District Jalgaon.

3] The Chairman / President,
Jalgaon Zilla Sahkari Naukranchi Sahkari
Patpedhi Ltd., Jalgaon, Ta. and Dist.Jalgaon. .. RESPONDENS.

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Mr. Maheshkumar S.Sonawane, Advocate for the Petitioner.
Mr. R. D. Sanap, APP for Respondent No. 1 and 2.
Mr. A. V. Hon, Advocate for Respondent No.3

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CORAM : T.V. NALAWADE &
K.K. SONAWANE, JJ.

DATE : 10TH JUNE, 2019.

ORAL JUDGMENT [PER K.K. SONAWANE, J]:-

1] Heard. Rule made returnable forthwith and matter was taken up for final adjudication on merit with the consent of both sides.

2] The petitioner moved the present Writ Petition, seeking exercise of extra-ordinary jurisdiction of this court under Article 226 of the Constitution of India, for issuance of direction to the respondent – concerned police authority – Jalgaon to register the crime for investigation into the allegation and to book the perpetrator of the crime of cheating, forgery, misappropriation, etc.

3] Factual matrix of the matter culled out, in brief, is that the petitioner was the Semi-Government Servant being employee of the Zilla Parishad, Jalgaon. The respondent No.3 society was established for the benefit and welfare of the Government/Semi Government employees. The petitioner was the member of respondent-society known as, "Jalgaon District Government Servants' Cooperative Credit Society Ltd., Jalgaon". According to petitioner, there were certain illegalities and irregularities committed about the affairs of aforesaid credit society. It has been alleged that the erstwhile Chairman Shri Sunil Surywnshi played mischief and swindled the huge amount of Rs. 50 Lakhs, which was deposited in the account of one Kiran Bhimrao Patil, member of the credit society. It has been contended that the erstwhile chairman Shri Sunil Suryawanshi in connivance with person Shri. Kiran Bhimrao Patil, opened the account bearing No.3/24 in the respondent No.3 – Government Servants Co-operative Credit Society Ltd., Jalgaon. Thereafter, the amount of Rs. 50/- Lakhs was shown deposited and later on withdrawn from the account on 19th

September, 2016. The petitioner cast allegations that there were no details about the source of Rs. 50 Lakhs deposited in the saving account of Kiran Bhimrao Patil, nor there was any record about payment of Government tax, etc. by the account holder Shri.Kiran Bhimrao Patil. It was not shown in his tax assessment documents. During the enquiry, it was transpired that the account holder Shri. Kiran Bhimrao Patil exchanged letter correspondence with the respondent-credit society and informed that he had not opened any account in the credit society bearing Account No. 3/24 nor he had deposited the amount of Rs. 50 Lakhs, nor it was operated by him for withdrawal of amount. The manager of the respondent society also communicated to the Board of Directors of respondent No.3 society, that the erstwhile Chairman Shri Suryawanshi kept an amount of Rs. 50 Lakhs as deposit in the name of Shri Kiran Bhimrao Patil. The petitioner being member of the respondent society approached to the Sub-Registrar of Cooperative Societies to initiate enquiry about the financial transaction operated from the Account No. 3/24 of Shri Kiran Bhimrao Patil. The petitioner suspected foul play that huge amount has been siphoned by creating fake bank account without following due procedure prescribed in society. According to petitioner, for withdrawal of huge amount from the account of the credit society, the resolution of the Board of Directors is necessary. But, in this case, there was no resolution passed by the Board of Directors of the Credit Society to allow the account holder Shri. Kiran Bhimrao Patil, for withdrawal of such huge amount of Rs. 50 Lakhs. The petitioner further added that one Magan Vyankat Patil, also lodged complaint with the police of Jalgaon for the mischief played by the erstwhile chairman of the credit society Shri Sunil Suryawanshi and Kiran Patil. The respondent No.3 society also issued letter for enquiry into the allegations made by Magan Patil, but there was no progress into the matter. The respondent society provided all relevant information and documents to the respondent No.2 police authority in order to book the guilty persons into the crime. But, the inquiry about the allegation is still pending with police authority.

4] In view of lethargic approach of the concerned police authority, the petitioner rushed to this court and filed the present petition, for requisite directions to the concerned police personnel to register the crime and to do the needful to book the guilt of the erstwhile Chairman Shri Sunil Suryawanshi. The petitioner produced bunch of documents comprising letter correspondence and report of the Credit Society, etc. on record for perusal.

5] Having given anxious consideration to the submissions advanced on behalf of both sides, and after perusal of the documents produced on record, we are of the opinion that the contentions propounded on behalf of petitioner appear sustainable and considerable one. There was an Account No. 3/24 maintained and preserved with respondent No.3 - Co-operative Credit Society in the name of one Kiran Bhimrao Patil. The respondent society did not put into controversy that there was a deposit of Rs. 50 Lakhs in the account of Shri. Kiran Bhimrao Patil. But, lateron, the total amount of Rs. 50 Lakhs was shown withdrawn on 19th September, 2016. The Branch Manager – Narayan Kadu Sonawane on 28.9.2016 issued letter addressed to the Chairman of the Credit Society and apprised him that the erstwhile Chairman of the Credit Society Shri Sunil Suryawanshi on 12.2.2019 came in the branch alongwith cash amount of Rs. 50 Lakhs and he put the entire amount as deposit in the account No. 3/24 opened in the name of one Kirsn Bhimrao Patil. According to Branch Manager Shri Narayan Kadu Sonawene, the erstwhile Chairman Shri Sunil Suryawanshi put his signature on the relevant documents for opening the saving account in the name of Kiran Bhimrao Patil. The Chairman Shri Sunil Suryawanshi put his signature being a person by name Shri Kiran Bhimrao Patil for withdrawal. The entire cash amount of Rs. 50 Lakhs was withdrawn by erstwhile Chairman Shri Sunil Suryawanshi by putting his signature pretending tobe Kiran Bhimrao Patil.

6] *Prima facie*, it reveals that there was an amount of Rs. 50 Lakhs deposited in the account of one Kiran Bhimrao Patil. But, the person Shri. Kiran Bhimrao Patil denied about any account No.3/24 operated by him. Obviously, these circumstances adumbrate the mischief played with the Account No. 3/24 opened in the name of Kiran Bhimrao Patil, for deposit and withdrawal of huge amount of Rs. 50 Lakhs. Moreover, there was an procedure followed by the concerned banking authority for deposit and withdrawal of the huge amount with the permission of Board of Directors by requisite resolution. It has been contended that there was no such resolution ever passed by the Board of Directors of the Credit Society. These circumstances smack something fishy about commission of cognizable offence of Cheating, Forgery etc. In such circumstances, the entire transactions operated from the account No.3/24 maintained and preserved in the society is required to be investigated thoroughly to find out the truth. It is also imperative to verify the source of Rs. 50 Lakhs, which were kept in the account, and lateron, withdrawn clandestinely by putting signature of account holder.

7] The allegations nurtured on behalf of petitioner are sufficient to make out a case of cognizable in nature. Therefore, it was mandatory for the concerned Police to switch on the penal law for investigation into the matter after registration of crime. However, we are at our wit's end that the complaint filed by the petitioner unequivocally disclose the commission of cognizable offence, even though, for what reason the concerned Police did not register the crime to set the penal law in motion against the so-called perpetrator. At this stage, it would apposite to make reference of legal guidelines delineated by the Honourable Apex Court, in the case of – Lalita Kumari Versus Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1. The Larger Bench of the Honourable Apex Court elucidated the legal guidelines in para No. 120 as follows :-

"120. In view of the aforesaid discussion, we hold:

120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/ Daily Diary is the record of all information received in a police station, we direct that all information relating to *cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."*

8] In view of aforesaid legal dictum, we are of the opinion that by exercising extraordinary jurisdiction, it is essential to direct the concerned police authority to register the crime and to proceed for investigation into the matter, to find out the truth, for requisite action against the culprit. Therefore, there is no impediment to allow the petition. In sequel, we pass following order :

ORDER

[I] The petition stands allowed.

[II] Relief is granted in terms of prayer clause (B).

[III] Crime is to be registered in Jalgaon City Police Station for the offence punishable under section 420 and forgery as well as other relevant offence concerning black money, etc.

[IV] Application for intervention stands disposed of.

[V] Rule is made absolute in those terms.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

grt/-