IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 993 OF 2019

Adv. Shri. Sadashiv Ambadas Gaike,
Age 70 years, Occu. Agriculturist and
Social Worker, R/o. Dinwada,
Post Maliwadgaon, Taluka Gangapur,
District Aurangabad. .. PETITIONER

VERSUS

1 The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.

2 The Director General of Police
Maharashtra State, Mumbai.

3 The Police Commissioner,
Aurangabad Division, Aurangabad.

4 In-charge of Police Station,
Kranti Chowk, Aurangabad.

5 Investigating Officer,
Crime No. 571 of 2017,
Economic Wing, Crime Branch,
Aurangabad City, Aurangabad. .. RESPONDENTS

...

Mr. V. D. Sapkal, Advocate for Petitioner.
Mr. A. B. Girase, PP for respondents.

...

WITH
CRIMINAL APPLICATION NO. 3018 OF 2019
IN
CRIMINAL WRIT PETITION NO. 993 OF 2019

1 Rajeshwar s/o. Bhimrao Kalyankar,
Age 57 years, Occu. At present Nil
(the then Managing Director of the
Aurangabad District Central Cooperative
Bank Limited, Aurangabad), At present
residing at Plot No. 67, Ramtara Housing
Society, In front of Sigma Hospital,
Shahanoorwadi, Aurangabad, Taluka and
District Aurangabad (Permanent R/o. Village
Taroda (Khurd), Tulshiram Nagar, Malegaon
Road, Nanded.

2 Sheshrao s/o. Kaduba Katkar,
Age 60 years, Occu. At present Nil
(the then General Manager of the
Aurangabad District Central Cooperative
Bank Limited, Aurangabad), R/o. : N-11,
House No. 8/10, Navjeevan Colony,
Aurangabad, Taluka and District
Aurangabad.

3 Chandrakant s/o. Omkar Bholane,
Age 60 years, Occu. Chartered Accountant
(Firm: Bholane and Shilwant Company), R/o.
Gandhi Nagar, (Near Bansilal Nagar),
Aurangabad.

4 Shabbir Khan s/o. Husain Khan Patel,
Age 72 years, Occu. Agriculture,
(Ex-Director of the Aurangabad District
Central Cooperative Bank Limited,
Aurangabad), R/o. Shah Nagar, Near Patel
Lawns, Beed Bypass Road, Satara Parisar,
Aurangabad, Taluka and District
Aurangabad.

5 Jayaram s/o. Nathuji Salunke,
Age 69 years, Occu. Business,
(Ex-Vice Chairman of the Aurangabad
District Central Cooperative Bank Limited,
Aurangabad), R/o. 23, Samadhan Colony,
Kokanwadi, Aurangabad, Taluka and District
Aurangabad.

6 Vishnu s/o. Rangnath Jadhav,
Age 62 years, Occu. Agriculture,
(Ex-Director of the Aurangabad District
Central Cooperative Bank Limited,
Aurangabad), R/o. At Post Maliwadgaon,
Taluka Gangapur, District Aurangabad.

7 Sanjay s/o. Pandharinath Shelke,
Age 48 years, Occu. Service,
(Ex-Union Representative of the
Aurangabad District Central Cooperative
Bank Limited, Aurangabad), R/o. At
Sayyadpur, Post Ladaswangi, Taluka and
District - Aurangabad. .. **APPLICANTS/ INTERVENERS** (Proposed Respondents No.6 to 12 in Cr.W.P.)

VERSUS

1 Sadashiv s/o. Ambadas Gaike,
Age 70 years, Occu. Agriculture and Social
Worker, R/o. Dinwada, Post Maliwadgaon,
Taluka Gangapur, District Aurangabad.

2 The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.

3 The Director General of Police
Maharashtra State, Mumbai.

4 The Police Commissioner,
Aurangabad Division, Aurangabad.

5 In-charge of Police Station,
Kranti Chowk, Aurangabad.

6 Investigating Officer,
Crime No. 571 of 2017,
Economic Wing, Crime Branch,
Aurangabad City, Aurangabad.

.. **NON APPLICANTS/ RESPONDENTS**
(No.1 Writ Petitioner and Nos. 2 to 6 Respondents No.1 to 5 in Cri.W.P.)

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Mr. Rajendra S. Deshmukh, Advocate for Applicants.
Mr. V. D. Sapkal, Advocate for Respondent No.1.
Mr. A. B. Girase, PP for Respondents No. 2 to 6.

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

DATED : 18th SEPTEMBER, 2019.

ORAL JUDGMENT :- (Per: K.K. SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The petitioner, invoking remedy under Article 226 of the Constitution of India preferred the present Writ Petition seeking following reliefs -

> *"B. To quash and set aside the order dated 07-02-2019 issued by Special Inspector General of Police, by issuing appropriate writ or order or directions in the nature of writ.*

> *C. To direct respondents to transfer the investigation to State CID Crime Branch Pune, in Crime No. 571 of 2017 registered with Kranti Chowk Police Station, Aurangabad by issuing appropriate writ or order or directions in the nature of writ."*

3. It has been contended that the petitioner lodged the First Information Report bearing Crime No. I-571 of 2017 registered under Section 406, 409, 420, 463, 468, 471, 120-B of Indian Penal Code with Kranti Chowk Police Station, Aurangabad. The petitioner cast allegations that the Managing Committee and the officers of the District Central Co-operative Bank, Aurangabad, i.e. Chairman, Vice-Chairman and other members of the Board of Director including Executive Director in connivance with the Chartered Accountant and Officers of the Bank, illegally written off the amount of loan of Rs.8,52,01,862/- (Rs. Eight Crores Fifty Two Lakhs One Thousand Eight Hundred Sixty Two Only) disbursed in favour of more than 52 Co-operative Societies in Aurangabad District. It has been alleged that the members of the Manging Committee and others during the period from year 2011 to 2014 shown the recovery of loan amount from the borrower - Co-operative Societies by fabricating the documents as well as by showing the recovery through book adjustment. There were no endeavour to recover the loan and without following due procedure, the Managing Committee of the Bank proceeded to write off the loan disbursed to the Co-operative Societies. According to first-informant, all these co-operative societies were floated by the members of Board of Directors of the Bank themselves or their kith and kins. The first-informant also raised the doubt about genuineness of audit report obtained by the

bank, in connivance with the Chartered Accountant and others. It has been contended that when there was no actual recovery of loan amount, but it was shown by making book adjustment, in such circumstance, the audit report looses its significance. There were allegations of fraud, mischief and misappropriation of public funds, etc. which caused heavy loss to the bank authorities.

4. After registration of crime, the investigation was entrusted to Police of Special Economic Crime Branch, Aurangabad. Accordingly, investigation was carried out. But, the Investigating Agency did not come across with any illegality nor there was any misappropriation of public fund or cheating or prejudice to the agriculturist, members of the Bank. Therefore, the Investigating Agency filed the 'C' Summary report before the concerned learned Magistrate under Section 173(2) of the Code of Criminal Procedure, 1973. The notice of 'C' Summary report filed on behalf of Investigating Agency, was issued to the first-informant i.e. present petitioner. In response, petitioner appeared before the learned Magistrate and refused to accept 'C' Summary report filed on behalf of Investigating Agency. He raised the objection and filed reply on record. According to petitioner, the investigation conducted by the Investigating Agency appears to be based on misconception of factual aspects as well as allegation made in the FIR. The members of Directors of the Bank are the influential political leaders and there were efforts to shield the perpetrators of the crime. The learned Chief Judicial Magistrate (CJM) considered the reply filed in detail on behalf of first-informant -petitioner and arrived at the conclusion that there are some irregularities in disbursement of loan to

the 52 Co-operative Societies. There were no documents of mortgage deed executed in lieu of security by the Bank. According to learned CJM, the allegations are about the fraud and misappropriation of huge amount and investigating agency is required to explore every avenues of the crimes. The investigation conducted by the Investigation Officer (IO) appears superficial in nature. Therefore, the learned CJM refused to accept the 'C' Summary Report and directed to carry out the further investigation into the matter as contemplated under Section 173 (8) of Cr.P.C.

5. Therefore, further investigation was commenced as per order of learned Magistrate. But, the Investigating Agency once again preferred 'C' Summary Report before the concerned learned CJM, Aurangabad, on 21-07-2018. The learned Magistrate, after hearing both sides, found reluctant to accept the 'C' Summary Report vide Cr. M. A. No. 1605 of 2018 filed by the Investigating Agency on second occasion. Therefore, the learned CJM, once again, ventured to direct the IO to proceed further for investigation into the matter with the help of first informant. The first informant was also directed to furnish requisite documents, which are available with him, if any, to bring home guilt of the offender.

6. Thereafter, the petitioner filed representation to the Commissioner of Police, Aurangabad City as well as Director General of Police, Mumbai and Honourable Home Minister, Government of Maharashtra and requested them to get the further investigation of the present crime transfer to the State, Central Investigation Department

(CID), Pune. But, the petitioners did not receive any response. Thereafter, he preferred the Criminal Writ Petition No. 214 of 2018 for seeking directions to the concerned authority to decide his representation at the earliest. Accordingly, directions were issued by this Court to the concerned police authority, which resulted into issuance of letter/ order by the Special Inspector General of Police dated 07-02-2019, allowing the further investigation of crime, through the same team of Investigating Agency. There was condition that the further investigation should be under supervision of Dy.S.P. Smt. Dipali Ghate. The higher authority of the Police also directed the Investigating Agency to complete the task within four weeks.

7. Meanwhile, the validity and propriety of impugned order of learned CJM dated 08-10-2018 directing the Investigating Agency to conduct further investigation, was agitated before the learned Additional Sessions Judge, on behalf of Investigation Officer by filing Revision Petition No. 325 of 2018. The learned Additional Sessions Judge appreciated the entire factual aspects of the matter in the light of allegations made in the FIR and upheld the order rendered by learned Magistrate for direction to conduct further investigation into the matter on second occasion. The petitioner has an apprehension of tainted and perfunctory investigation into the matter by the same Investigating Agency. Hence, petitioner rushed to this Court and preferred the present petition seeking direction to the respondent-State to get transfer the further investigation of the present crime to the State CID, Pune.

8. Learned counsel Shri. Sapkal appearing for the petitioner vehemently submits that the Investigating Agency conducted the investigation on two occasions and filed 'C' Summary report into the matter. But, 'C' Summary report was not accepted by the learned CJM Aurangabad and the Police were directed to go on for further investigation to explore every avenues of the crime to find out the truth. Learned counsel Shri. Sapkal drawn attention of this Court towards letter/order dated 07-02-2019 issued by the Special Inspector General of Police. The earlier team of Investigating Agency was allowed to conduct further investigation. According to him, the Special Inspector General of Police, taking recourse of ratio laid down by this Court in Criminal Writ Petition No. 320 of 2005 (*Shri. Shivaji Pralhad Pankhule and others Versus The State of Maharashtra and others*) allowed the further investigation into the crime by same Investigating Officer. He did not transfer the further investigation to any other police officers. However, the further investigation conducted by same officers did not evoke any result. He raised doubt about the performance and integrity of the Investigating Agency while conducting investigation of serious offence against the influential persons having political clout. They attempted to shield the high profile accused in this case. According to learned counsel Shri. Sapkal, once again if the same team of the Investigating Agency is allowed to conduct further investigation into crime, the very purpose of filing the FIR would become infructuous and frustrated one. It would difficult to collect concrete evidence to bring home guilt of accused in this case.

9. Learned Public Prosecutor fairly conceded about the factual aspects of filing 'C' Summary report on two occasions by the same Investigating Agency. Learned PP gave emphasis on the ratio laid down in Cr.W.P.No. 320 of 2005 and submits that there was no illegality or infirmity in the order dated 07-02-2019 issued by the Special Inspector General of Police. He has also given much more stress on the circumstances that the investigation must be carried out in fair and unbiased manner and real culprits are required to be brought to book.

10. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also seriously delved into the documents of 'C' Summary reports filed on behalf of Investigating Agency on two occasions in this matter as well as order of learned Magistrate not to budge in favour of police for accepting 'C' Summary report.

11. Undisputedly, the allegations nurtured in the FIR are all serious and anti-social in nature involving huge amount of public fund. The Investigating Agency conducted the investigation and opined that there was no illegality or imperfection in the procedure adopted by the bank authority for taking action to write off the loan amount disbursed in favour near about 52 Co-operative societies in this case. According to Investigating Agency, there was no loss to the concerned bank or it would not cause any prejudice to the agriculturist – members of the Co-operative societies.

12. The record adumbrates that the first-informant did not agree

with the contentions propounded on behalf of Investigating Agency for filing 'C' Summary report. According to first-informant – petitioner, the bank has taken the decision in arbitrary manner to write off the huge amount of loan. There was no endeavour to recover the loan amount from the members of the concerned societies. It has been alleged that there was no recovery of loan, but, it was shown recovered on documents only by making book adjustment. The members of Manging Committee of the Bank were themselves the Directors of the Co-operative Societies or their relatives played vital role to siphon off the public fund. The learned Magistrate was in agreement with the objections raised on behalf of petitioner and refused to accept the 'C' Summary report on second occasion. It has been observed by the learned Magistrate that the amount of shares of the Co-operative societies were directly transferred to the loan account by the Bank. There was resolution passed by the Managing Committee of Bank that the addresses of Directors of 52 Co-operative societies were not traceable. The learned Magistrate raised doubt as to how the share of Co-operative societies were transferred to the loan account when its Directors are not traced-out. It has been alleged on behalf of petitioners that most of the members of Managing Committee themselves were the Director of the Co-operative Societies or their kith and kins availed the financial assistance of huge amount being the Directors of the Co-operative Societies. The learned CJM in his order dated 08-10-2018 in Cr.M.A. No. 1605 of 2018 observed in paragraph No. 6 onward, as under -

> *"6] There is nothing before this court to show that, the Investigating Officer has taken pains to ascertain*

as to who were the Directors of the 52 credit societies, what were their addresses. There is nothing before this Court to show that, the Investigating Officer has ever tried to find out those persons.

7] According to the informant, the accused were the Directors or their relatives were the Directors. However, there is no investigation to that effect. As per the law, the bank has to make arrangement for the non performing assets account from the profit of the bank. If, that is so, then naturally, the members will get lesser dividend. Thus, it is loss to the members of the societies. Therefore, prima-facie the conclusion that, there was no loss cannot be accepted.

8] It is pertinent to note that, the registration of the said 52 credit societies is cancelled. The Investigation Officer was required to investigate in that angle also. However, he has not done so. The sum and substance of the report is that, as the loan amount is written off, neither the report is false or true. However, considering the above facts, this conclusion cannot be accepted. Further and proper investigation needs to be done. Hence following order is passed.

Order

1) *The report is rejected.*
2) *The Investigating Officer is directed to further investigate the matter with the help of informant.*
3) *The informant is directed to furnish necessary documents, evidence, if available with him.*
4) *The record be sent to the Investigating Officer, except the say, the documents, filed by the informant and the Roznama.*
5) *The proceeding is closed.*

Sd/-
(M. N. Patil)
Date : 08/10/2018 *Chief Judicial Magistrate,*
Aurangabad "

13. It becomes manifestly clear from aforesaid circumstances that the concerned Investigating Agency failed to conduct the investigation of the present crime in proper manner. They did not pay attention to the serious pitfalls of the crime. The investigation of the present matter conducted uptill this date appears superficial in nature. The Investigating Agency did not appreciate the gravity of allegations nurtured on behalf of first-informant in his FIR for commission of crime by the Members of Managing Committee of the Bank. It seems that the Investigating Agency took efforts to find out the illegality and error in the procedure adopted by the bank to write off the loan. This kind of investigation found based on misconception of factual score of the matter. The documents maintained and preserved by the Bank may suggest that the procedure adopted by Bank authority to write off the loan was within purview of Banking Rules and Regulations. But, there were allegations about the actual recovery of loan amount from the concerned Directors of the Co-operative Societies. There were no endeavour to attach and seize their immovable properties nor there were any litigation filed for recovery of loan. These all issues are required to be investigated into the matter in detail inquiry. The learned Magistrate made an attempt to describe the proposed line of action for further investigation into the matter.

14. It is to be noted that the investigation of crime is the field exclusively reserve for investigating agency, the superintendence over which vests in the State Government. It is the duty of the investigating agency to collect evidence to bring home guilt of the alleged offender. Once it is completed and I.O. submits report to the

Court for taking cognizance of the offence under Section 190 of Cr.P.C., the duty of the investigating agency comes to an end subject to provisions of Section 173(8) of Cr.P.C. for direction. Thereafter, adjudicatory functions of the judiciary commences to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. The law does not permit the Court to cause interference in the investigation except for compelling circumstances.

15. In the matter in hand, the petitioner raised doubt about the performance and integrity of the Investigating Agency into the matter. The opportunity was given to the Investigating Agency on two occasions to conduct the investigation. But, all the efforts found unavailing. The IO failed to satisfy the learned Magistrate on the merits of investigation. Therefore, in view of factual aspects of the matter as well as nature and gravity of the allegations reflect from FIR against the members of the Board of Directors of Bank authority; we find the contentions propounded on behalf of petitioner much more formidable and comprehensible one.

16. Learned PP drawn attention of this Court towards exposition of law referred by this Court in the Judgment of Criminal Writ Petition No. 320 of 2005 and submits that the further investigation is required to be conducted by the same Investigating Agency. We are not in agreement with the submissions advanced on behalf of learned PP for allowing the same Investigating Agency to proceed ahead for further investigation in the present crime. The facts and circumstances of the matter in Writ Petition No. 320 of 2005 are not akin to the factual aspects of the

matter in hand, but same are distinguishable in nature. Therefore, exposition of law described in Writ Petition No. 320 of 2005 by this Court would not render any assistance in this matter. In Writ Petition No. 320 of 2005, there was two charge-sheets filed by two different Investigating Agencies for the crime registered on one and the same FIR. There was dichotomy in the opinion of IO in both the chargesheets about involvement of each of the accused in the crime. But, in the matter in hand, the investigation is yet to complete by filing charge-sheet. Therefore, the principle laid down in Writ Petition No. 320 of 2005 would not be make applicable to the present case.

17. It is also strange to appreciate that for what reason the Investigating Agency knocked the door of Court of Additional Sessions Judge by filing Revision Petition No. 325 of 2018 against the order of refusing to accept 'C' Summary report filed by the Investigating Officer. Ironically, the learned Additional Sessions Judge did not budge to accept the contention propounded on behalf of Investigating Agency and rejected the revision application. The learned Sessions Court upheld the order of further investigation passed by learned Magistrate dated 08-10-2018. This attempt on the part of Investigating Agency smack something fishy. It would fallacious to appreciate that the impugned order of Magistrate dated 08-10-2018 for direction to conduct the further investigation would cause any prejudice to the Investigating Agency, and therefore, being aggrieved by the order of Magistrate, the IO Shri. Nawale of Special Economic Crime Branch, Aurangabad, had been to the Sessions Court for redressal of his grievances.

18. Be that as it may, in view of nature of subject matter and the gravity of allegation nurtured on behalf of first-informant into the FIR against the high profile accused, we find that the reasonable opportunity is required to be given to the Police of State CID to investigate and to examine all ramification of the crime by going deep into the allegation to find out the real perpetrator to unearth the truth. Definitely, it would sub-serve the purpose to meet the ends of justice. Therefore, we have no any hesitation to accept the submissions made on behalf of petitioner to get transfer the investigation of the present crime from the Special Economic Crime Branch, Aurangabad to the State CID, Pune, for further investigation as directed by the learned Magistrate vide order dated 08-10-2018.

19. The Criminal Application No. 3018 of 2019 is filed by the intervenor - so-called proposed accused in the present proceeding. But, the investigation is in progress and yet the charge-sheet is to be filed. Therefore, the law does not permit the alleged so-called suspects of the crime to cause interference in the investigation up-till cognizance of the crime has been taken by the concerned Magistrate. Therefore, the present application for intervention being inapt deserves to be disposed of.

20. In the above premise, Criminal Writ Petition No. 993 of 2019 stands allowed in terms of prayer clause 'C'. It is hereby directed that the investigation of Crime No. I-571 of 2017 registered at Kranti Chowk Police Station, Aurangabad, be transferred forthwith to State, CID, Pune, for further investigation into the matter. The Criminal Application No. 3018 of 2019 for intervention is hereby disposed of. Rule made

absolute, accordingly.

21. In the result, both proceedings stand disposed of in above terms. No order as to costs.

Sd./-
[K. K. SONAWANE]
JUDGE

Sd./-
[T.V. NALAWADE]
JUDGE

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