

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Application No.4378 of 2016
With
Criminal Application No.548 of 2019**

- 1) Anna s/o Bapurao Bhopale,
Age 53 years,
Occupation: Agriculture,
R/o House No.151,
Ramkrupa Colony, Darga Road,
Shahanoorwadi, Aurangabad,
District Aurangabad.
- 2) Vijay s/o Uttamrao Kale,
Age 40 years,
Occupation: Service,
R/o Kotla Colony, Aurangabad. .. **Applicants.**

Versus

- 1) The State of Maharashtra
Through Police Inspector,
Police Station Kranti Chowk,
Aurangabad, Dist Aurangabad.
- 2) Sadashiv Ambadas Gaike,
Age 65 years,
Occupation: Agriculture,
R/o. Dinwada, Post Maliwadgaon,
Taluka Gangapur,
District Aurangabad. .. **Respondents.**

Shri. S.S. Thombre, Advocate, for applicants.

Shri. S.B. Joshi, Additional Public Prosecutor, for
respondent No.1.

Shri. K.F. Shingare, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
MANGESH S PATIL, JJ.**

Date : 22 APRIL 2019

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

- 1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
- 2) The proceeding is filed for the relief of quashing of F.I.R.No.704/2016 registered with Kranti Chowk Police Station Aurangabad for offences punishable under sections 420, 465, 471, 406, 409, etc. and 120-B of Indian Penal Code an also the case bearing R.C.C.No.1902/2017 filed by police in this crime for the same offences.
- 3) The crime is registered on the basis of complaint made by respondent No.2. He had filed a private complaint and after the directions given by the learned Judicial Magistrate First Class to make investigation under section 156(3) of the Code of Criminal Procedure police made investigation and charge sheet came to be filed.

4) The allegations are made mainly against one Suresh Dayaram Patil, who was the Chairman of Aurangabad District Central Cooperative Bank. He is dead. Allegations are made that this accused wanted to contest the election to the Aurangabad District Central Cooperative Bank from the constituency of cooperative society for the period 2015-2020 and he filed the nomination form along with affidavit on 7-4-2015. Allegations are made against present applicants, who are accused Nos.3 and 4, signed as proposer and seconder on the nomination form. Along with nomination paper there was certificate of no dues dated 7-4-2015 which was issued by accused No.2 to certify that there was no amount due from the candidate to the bank, he is not debtor. There was also a certificate issued by Aurangabad Zilla Nagari and Pagardar Patsansthanacha Sahakari Sangh Maryadit, Aurangabad", a cooperative credit society. It is contended that the accused No.1 was the chairman of one ginning and pressing cooperative society of village Nagad and he had filed nomination form as representative of that society. It is contended that said society had borrowed the loan from Aurangabad District Central

Cooperative Bank, of Rs.19,53,579/- and the loan was still outstanding. It is contended that for recovery of this loan proceeding was filed under section 91 of the Maharashtra Cooperative Societies Act against the accused No.1 and the said ginning and pressing society but in-spice of that circumstance no dues certificate was issued by accused No.2. It is contended that the applicants who had signed on nomination paper as proposer and seconder had knowledge about this circumstance but they signed on the nomination and thereby they have committed the offence.

5) The submissions made and the record show that the role of the applicants was only to sign on the nomination form as proposer and seconder. They were noway concerned with the aforesaid ginning and pressing society. As per the procedure they were entitled to sign on the nomination form as they were members of Aurangabad District Central Cooperative Bank. There is no provision in the Cooperative Societies Act or the Rules making them liable for signing on the nomination paper as proposer or seconder. It can be said that false no dues certificate was prepared by accused No.2 at the instance

of accused No.1 and the accused No.1 had used the certificate by producing the same with the nomination form. It cannot be said that the present applicants had joined hands with accused Nos.1 and 2 for creating false certificate. It cannot be said that there was conspiracy between the applicants and other two accused. Thus, the allegations as they are, cannot make out any case against the present applicants. It will be abuse of process of law if they are made to face the trial for the aforesaid offences on the basis of the aforesaid allegations. In the result, the application is allowed. Relief is granted to the extent of the applicants in the aforesaid case in terms of prayer clause (C-1). Criminal Application No.548/2019 is disposed of. Rule made absolute in the above terms.

Sd/-
(MANGESH S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1