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

CRIMINAL APPLICATION NO. 2795 OF 2018

ADV. SANDESH SHIVAJIRAO POTDAR
Age: 59 years,
Occupation: Practicing Lawyer/Legal Profession (Advocate)
Resident of, House No.299,Talwada Phata,
Bag Pimpalgaon, A/P.-Bag Pimpalgaon,
Tal: Georai, Dist. Beed.
Maharashtra ... **APPLICANT**

V E R S U S

1. THE STATE OF MAHARASHTRA
At the instance of,
The Police Inspector & Investigation Officer,
Georai Police Station, Georai, Tal: Georai,
Dist: Beed (Maharashtra)

2. THE SUPERINTENDENT OF POLICE
Beed District

3. MR. PATHAN AATHRAK PHAKHARULAKHAN
Age: Major, Occupation: Service,
Having address at,
Jai Prakash Nagari Patsanstha Maryadit, Georai.
... **RESPONDENT**
(Original Complainant)

...

Mr. A. D. Ostwal, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent Nos.1 & 2.

...

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

DATE : 25th March, 2019.

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

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 Nobody has turned up for the Complainant, co-operative credit society though it was duly served.

3 The submissions made show that the present Applicant was working as the Secretary of the Complainant co-operative credit society. He avoided to get conducted the audit of the society for so many years and when it was felt that there was something fishy, inquiry was made. During inquiry, so many incidents were noticed showing that the present Applicant in the capacity of the Secretary had given loan to many persons, when there was no security. He had given loan to his friends without security by misusing the power. He had withdrawn amount from the accounts of some persons. He had

helped his wife in getting loan in the name of the institution or concern like milk dairy and that way he had siphoned the money of the society and he had misappropriated that amount. In the first FIR given, there was a mention of incident of giving false no dues certificates in favour Prabhakar Kangude, when he had not cleared the loan and on the date of no dues certificate, the amount of more than eight lakh was outstanding against him. This incident was mentioned in the first FIR and in the first FIR Prabhakar Kangude was shown as accused. The learned counsel for Applicant submitted that though initially Prabhakar Kangude was shown as absconding accused, subsequently he surrendered and now he is facing the trial in the case filed in the first FIR, C.R. No.208 of 2012.

4 The learned counsel for Applicant did not press for the relief of quashing of FIR. He submitted that the second FIR came to be given on 1st October, 2017 for the society in respect of the same incident, giving of false no dues certificate in favour of Prabhakar Kangude. The record in respect of second FIR, FIR No.508 of 2017 shows that not only against Prabhakar Kangude, but against one another lady Sumitra Kangude also the crime is registered. It appears

that by using the aforesaid false no dues certificates, sale-deed was subsequently executed in favour of third party and so the crime is registered for the offences punishable under Section 420, 467 read with 34 of the Indian Penal Code. The aforesaid lady was not made accused in the first case. It can be said that due to instance of sale, which took place subsequent to registration of first crime, separate FIR was tenable. But only due to so-called false no dues certificates, sale-deed was executed and it can be said that the sale-deed was a consequence of issuing of the false no dues certificate. It can be said that both the offences can be tried together. It can be said that the offence, which took place subsequently of cheating the purchaser took place due to showing of false no dues certificate.

5 The learned counsel for Applicant placed reliance on some observations made by the Supreme Court in the case reported as ***<u>(2013) 6 Supreme Court Cases 348</u>***, (*Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another*). He drew the attention of this Court to some observations made, which are in paragraphs 37 and 38. Ultimately, in paragraph 60, the Apex Court held that in such circumstances, the second case if it is filed can be

treated as supplementary charge-sheet of the first charge-sheet. In the present case, if the charge-sheet is not filed in second FIR, C.R. No.508 of 2017, police can file supplementary charge-sheet in C.R. No.208 of 2012 in first case. With these observations and with these directions, the application is allowed. Rule is made absolute in those terms.

[MANGESH S. PATIL, J.] **[T. V. NALAWADE, J.]**

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