

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 6 OF 2015**

Surinder Mohan Arora,)
Age : 57 years, residing at)
Plot No.33/13, A-Wing, Kiran)
Chandra, CHS Ltd.Manish Nagar)
Near Four Bungalows, Andheri (West)
Mumbai-400 053.) **....Petitioner**

V/s.

1. Maharashtra State Co-operative)
Bank Ltd., An unregistered bank,)
having its Head Office at Sir)
Vithaldas Thackersey Memorial)
Building 9, Maharashtra Chamber)
of Commerce Lane, Fort,)
Mumbai-400 001. Represented)
by its Administrators.)

2. The Chief General Manager)
National bank of Agriculture and)
Rural Development, having its Head)
Office at Plot No.24, 'G' Block,)
Bandra-Kurla Complex, Bandra (E)

Mumbai-400 051.)

3. The Commissioner for Co-operation
and Registrar of Co-operative)
Societies, Maharashtra State)
New Central office Building,)
Pune-411 001.)

4. The Chief General Manager,)
The Reserve Bank of India, Central)
Office, S.B.S. Marg, Mumbai-400 001

5. The Central Bureau of Investigation
120-B, 1st Floor, Tanna House)
Nathalal Parikh Road, Colaba)
Mumbai-400 005.)

6. State of Maharashtra)
Through the Principal Secretary)
Co-operative Department, Government
of Maharashtra, Mantralaya)
Mumbai.)

7. State of Maharashtra)
Through the Chief Secretary,)
Government of Maharashtra)
Mantralaya, Mumbai.)

8. Union of India, The Secretary)

Ministry of Law Department,)

9. The Secretary, Ministry of)
Agriculture, Department of)
Agriculture and Co-operation)

10. Ministry of Finance, Banking)
Secretary, Government of India)
Jeevan Deep, III Floor,)
Parliament Street, New Delhi)

11. Manikrao M. Patil, the then)
Chairman, Borgaon, Tal. Walwa)
Dist. Sangli)

12. Nilesh @ Balasaheb V. Sarnaik)
then Vice Chairman, Vasantnagar)
Tarabai Park, Kolhapur)

13. D.M. Mohol, the then Managing)
Director B/201, Kailas Parbat)
Co.op Hsg. Soc. Santacruz)
Mumbai.)

14. Arvind N. Poreddewar, the then)
Director, Aarmori, Tal. Aarmori)
Gadchiroli)

15. Nitin Suresh Patil, the then)

Director, 25, Parvati, New)
Samarth Nagar, Aurangabad)

16. Vasantrao Natha Shinde, the)
then Director, Lengere, Tal.)
Khanapur, Dist. Sangli)

17. Rajvardhan R. Kadambande, the)
then Director, Torkheda, Tal.)
Shahada, Dist. Dhule)

18. Yashwantrao K. Gadakh, the)
then Director, Sanai, Tal.)
Newasa, Dist. Ahmednagar.)

19. Dr. Santoshkumar W. Korape,)
the then Director, Ramkrishna)
Niketan Jathar Peth, Akola.)

20. Shrinivas T. Deshmukh, the)
then Director, Jawarabaggi,)
Nimgaon, Tal. Chandur, Amravati)

21. Amarsingh Shivajirao Pandit)
The then Director, Shivchartra)
Subhash Road, Beed.)

22. Sunil Baburaoji Phunde, the)
then Director, Indrakunj, Pragati)

Co. Sunderwafa, Sakoli,)

23. Vijay N. Vaddettawar, the)
then Director, Chimur, Tal.Chimur)
Dist.Chandrapur.)

24. Ishwarlal S. Jain, the then)
Director, Supari Baug, Tal.)
Jamner, Dist. Jalgaon)

25. Manikrao S. Kokate, the then)
Director, Somthane, Tal. Sinner)
Dist. Nasik.)

26. Rahul M. Mote,)
Girvali, Tal. Bhum, Dist-)
Ussmanabad.)

27. Diliprao D. Deshmukh, the then)
Director, Aashiyana, Saraswati)
Col.Latur, Dist. Latur)

28. Shivajirao V. Nalawade, the)
then Director, 3/304, Santoshimata)
Co-op Hsg. Soc. Bhatwadi)
Mumbai.)

29. Jitendrasingh J. Rawal, the)

then Director, Jai Palace, Hawai)
Mahal, Tal. Sindkheda, Dhule.)

30. Ramprasad W. Kadam-Bordikar)
the then Director, Nayanswapna,)
Jintur, Dist. Parbhani)

31. Ajit A. Pawar, the then)
Director, Katewadi, Tal. Baramati)
Dist. Pune.)

32. Jayant P. Patil, the then)
Director, Dainik Krushival,)
Veshavi, Tal. Alibaug)
Raigadh.)

33. Shekhar Govindrao Nikam)
the then Director, Sawarde,)
Tal. Chiplun, Dist. Satara)

34. Vilasrao N. Jagtap, the then)
Director, Kontyaboblad, Tal.)
Jat, Dist. Sangli.)

35. Laxmanrao Pandurang Jadhav)
Patil, the then Director,)
Vikasnagar, Sangamnagar)
Khed, Satara.)

36. Vijaysingh S. Mohite-Patil)
the then Director Shivratna,)
Yashwantnagar, Malshiras,)
Solapur.)

37. Rajan Krishna Teli, the then)
Director, Kankawali, Nath Pai)
Nagar, Sindhudurg.)

38. Yogesh Baban Patil, the then)
Director, Wada, Dist.Thane)

39. Suresh B. Deshmukh, the then)
Director, Vaishali Hsg. Soc.)
Sevagram Chowk, Vardha.)

40. D.M. @ Ravindra Deshmukh)
the then Director, Shivneri)
Soc. Aarni Road, Yavatmal)

41. Rajendra H. Jain, the then)
Director, Near Shivmandir)
Kuduva Line, Gondia.)

42. Dr. Babanrao B. Taiwade, the)
then Director, Plot No.13,)
Pavan Bhumi, Wardha Rd, Nagpur)

43. Pandurang P. Fundkar, the then)

Director, Vasundhara,)
Madhavnagar)
Khamgaon, Buldhana.)

44. Vishwasrao Jagdevrao Shinde)
the then Director, Kotgalli,)
Ussmanabad.)

45. Yashwant Pandurang Patil)
the then Director, Umrle,)
(Khalai), Sopara, Tal.Vasai)
Thane.)

46. Chendrashekhar M. Ghule Patil)
the then Director, Yashwant)
Co. Dahigavane, Tal.Shevgaon)

47. Diliprao Gangadhar Sopal)
the then Director, Sopal)
Bungalow, Aagalgaon, Barshi)
Solapur.)

48. Avinash Vithalrao Aringale)
the then Director, 3, Karnavati)
Apt. Behind Muktidham, Nashik)

49. Kiran D. Deshmukh, the then)
Director, Mauli SBI, Col.)
Bajorianagar, Yavatmal)

50. Anandrao V. Adsul, the then)
Director, 5-B, Kadamgiri Co-op)
Hsg. Soc, Kandivali, Mumbai.)

51. Dhananjay M. Dalal, the then)
Director, Krishnamandirward,)
Bh.Dalal Complex, Bhandara.)

52. Smt. Meenakshitai P. Patil)
the then Director, Aambepur)
(Pezari), Po.Poinad, Alibaug)

53. Smt. Rajanitai A. Patil, the)
then Director, Kej, Tal.Kej)
Dist. Beed.)

54. Smt. Shailaja Jagannathrao)
More, the then Director, Parijat)
Shegaon, Dist. Buldhana.)

(Respondent No.11 to 54- suspended)

board of Directors of the

Respondent No.1)

....Respondents

Mr. Satish B. Talekar, *Advocate for the petitioner.*

Mr. P.K. Dhakephalkar, Senior Counsel a/w. Mr. Bhushan A. Walimbe, *Advocate for respondent no.1.*

Mr. S.P. Bharati, *Advocate for respondent no.2.*

Mr. Deepak Thakare a/w. Mrs. Prajakta P. Shinde,
AGP for State.

Mr. S.M. Gorwadkar, Senior Advocate for
respondents no.17 and 33.

Mr. Govardhan Kamble, Mr. Dhiren Vairagade i/by.
Mahadik & Associates, *Advocate for respondent no.11.*

Mr. Kushal Ambulkar h/f. Mr. Pawan Mali, *Advocate for respondent no.29.*

Mr. Milind Sathe, Senior Advocate a/w. Mr. Joel Carlos, *Advocate for respondent no.31.*

Mr. C.G. Gavnekar a/w. Mr. Suhas S. Deokar,
Advocate for respondents no.32 and 52.

Mr. Shrikant Paropkari, D.C.P., E.O.W.

CORAM : S.C. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

RESERVED ON : 31ST JULY, 2019.

PRONOUNCED ON : 22ND AUGUST, 2019.

JUDGEMENT (PER : SANDEEP K. SHINDE, J):

1. Heard both sides.
2. Rule. Respondents waive service. By consent, rule is made returnable forthwith.
3. The present petition filed as Public Interest Litigation is in the interest of the public at large and is concerned with the alleged rampant corruption in the Co-operative Bank Sector, wherein Public ex-chequer's money has been looted by committing various irregularities and

fraud by the Bank.

4. By the petition, under Article 226 of the Constitution of India the petitioner prays for the following reliefs :

"1. To direct the Respondent No.5 to register an F.I.R. against all directors and Top Executives i.e. erring Chairman, Managing Directors, Directors, CEO, management staff in charge of the Respondent No.1 bank, and responsible office bearers and Directors of Sakhar Kharkhanas, Soot Girnis and other processing units who had taken loan from the respondent no.1 i.e. M.C.S. bank and also all erring office bearers of the DCCB, Pen Urban Co-op Bank who had taken large amount of loans fraudulently for offences committed by them of cheating, fraud, forgery, criminal breach of trust by bankers who are public servants, and under the relevant provisions of Securitization Act, 2002, Prevention of Corruption Act, and to submit report of investigation carried out by them to this Hon'ble Court.

2. The Hon'ble Court may supervise and monitor the said entire investigation of Respondent No.5 from time to time and may call for progress report from the Respondent No.5 till the conclusion of the investigation by CBI.

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3. To call for reports from Respondents in respect of the said matter.

INTERIM ORDER :

1. To direct the Respondent No.1 to produce the balance sheet and statutory auditors reports for the year 2010-2011 and 2011-12 and other details as mentioned in Ex.E to the petition.

2. To direct the Administrators of Respondent No.1 to submit the present status report of the Respondent No.1 bank and the steps both civil and criminal action taken against borrowing units and individual Borrowers as case may be for recovery of loans after and before they have taken charge of the Respondent no.1.

3. To direct the Administrators of Respondent No.1 to submit the details of the relationship of all the directors and chairman of the borrowing units, sakhar Kharkhanas and Soot Girnis who had been granted loans under various heads by the Respondent No.1 with the superseded board of directors of the Respondent No.1 and the status of the said superseded board of directors in the above borrowing units, sugar karkhanas and Soot Girnis.

4. A panel of expert banking administrators such as Malegaon Committee appointed by the RBI to consider the licensing of new urban co-operative bank be appointed in this matter and after scrutinizing the auditors statutory report and NABARD report on the Respondent No.1 bank for last two financial years to submit its report for the perusal of this Hon'ble Court and to take effective

steps thereafter as required.

5. To direct the Respondent No.5 to carry out investigation in respect of the mis management and affairs of the Respondent No.1 and to submit report of investigation carried out by them. It is absolutely necessary and important for public at large to see the fate of the investigation carried out by the Respondent No.5.

6. To direct the Respondent No.1 bank and Respondent No.2 to explain as what are other receipts and from where they received such huge funds as mentioned in the profit and loss account, internal page no.17, Annexure-X at Ex.D hereto.

7. To submit the progress report of the said investigation from time to time as ordered by this Hon'ble Court.

8. To direct the Central Government and the state Government of Maharashtra to take administrative disciplinary actions against the erring officers who have been found involved in the above offences according to service law and other relevant laws."

5. In the course of arguments, the petitioner has pressed prayer clause-5, that seeks investigation into the allegations made in the complaint and for report of investigation either through CBI or Economic Offences Wing (EOW) of

Mumbai with whom the complaint has been lodged on 29th January, 2018.

6. Before advertizing to the facts of the case, we think it is necessary to reproduce the orders passed by this Court from time to time and more particularly the orders dated 25th January, 2018 and 26th July, 2019.

ORDER DATED 25TH JANUARY, 2018 :

"1. After this matter was heard for some time and it was reported by the learned APP that the Economic Offences Wing (EOW) though in receipt of some letters/communications, is awaiting the comments/remarks of the Department of Cooperation, Government of Maharashtra and has forwarded these communications to the Commissioner of Cooperation/Registrar, Cooperative Societies, Pune.

2. In the meanwhile, our attention is invited by Mr. Talekar to a further affidavit of the petitioner who says that the petitioner has filed this criminal PIL seeking a direction to register an F.I.R. against the Directors of the Maharashtra State Cooperative Bank Limited for offences punishable under Sections 409, 420, 465 r/w Section 120B and other provisions of the Indian Penal Code.

3. The petitioner would, as a vigilant and genuine public spirited citizen, attend the office of the EOW at the Police Commissionerate, Mumbai, on Monday, 29th January, 2018 at 11:00 a.m. to have his statement recorded.

4. On instructions, it is stated by the learned APP that if the petitioner so attends, the concerned officials of the EOW will record his statement and thereafter take the further steps in accordance with law.

5. We accept the statement made on instructions by the learned APP as an undertaking to this Court.

6. In the event the petitioner does not attend the office of the EOW, as stated today, this Court would then dispose of this criminal PIL in accordance with law.

7. Stand over to 5.2.2018."

AND

ORDER DATED 26TH JULY, 2019

"1. Let the Deputy Commissioner of Police, In-charge of Economic Offences Wing, remain present in this Court on 31st July, 2019 at 3.00 p.m. and inform so also enlighten us as to what steps have been taken after the recording of petitioner's statement on 29th January, 2018.

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2. The statement was recorded as the petitioner alleged commission of offences and punishable under Sections 409, 420, 465, 468 read with 120-B of the Indian Penal Code, 1860. If these are cognizable offences, then, why registration of the First Information Report has not been done and if that is done, why for a year and more, no report has been laid of the investigations in the competent Criminal Court. We want answers to these queries and let therefore, the Deputy Commissioner of Police not seek an adjournment on the ground that he has not perused the file."

7. It may be stated that, though statement of petitioner was recorded on 29th January 2018, the same has not been produced for our perusal. On 31st July 2019, Shrikant Paropkari, Deputy Commissioner of Police (Economic Offences Wing) was present in the Court as directed. Mr. Thakare, learned Public Prosecutor, on instructions from Mr. Paropkari stated that, scrutiny of the statement of the petitioner and his complaint dated 29th January, 2018 does not provide reasons to suspect commission of any cognizable offence and therefore the First Information Report (FIR) has not been lodged. It

may be stated that, the Officer has not produced Station Diary which would disclose that before reaching to this conclusion, he has made enquiry, much less preliminary enquiry, in terms of the directions issued by the Hon'ble Supreme Court in **Lalita Kumari V/s. Government of Uttar Pradesh and Others, reported in (2014) 2 SCC 1** which read thus : -

i) The registration of FIR is mandatory under Section 154 CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) 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.

(iii) 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.

(iv) A police officer cannot avoid his duty of

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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.

v) 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.

vi) 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.

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vii) 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.

(viii) 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.

Thus, in terms of these directions, preliminary enquiry is to be made within seven days and it should reflect in the station diary as required in terms of Direction No.120.8 (Clause-vii hereinabove). The State in this case has neither produced station diary, nor filed a counter-reply, for satisfying our judicial conscience that a preliminary enquiry was held before reaching a conclusion that the complaint of the petitioner and report of NABARD has not disclosed commission of

cognizable offence. Thus, apart from the oral assertion of Shri. Paropkari, there is nothing on record to justify the conclusion.

8. No doubt, this Court cannot sit in Appeal over the opinion formed by Mr. Paropkari, Deputy Commissioner of Police, however, in absence of preliminary enquiry report or at least station diary being placed before us to satisfy us that preliminary enquiry was held, this Court in its inherent jurisdiction under Article 226 of the Constitution of India, is empowered to look into the complaint to ascertain whether it provides reason to suspect commission of cognizable offence.

9. In the case of **Lalita Kumari V/s. Government of Uttar Pradesh and Others**, reported in (2014) 2 SCC 1, the Constitution

Bench has held that "if the information given clearly mentions commission of offence, there is no option but to register the FIR forthwith. The other considerations are not relevant at the stage of registration of FIR, such as whether the information is falsely given, whether the information is genuine, whether the information is credible. These are the issues that are to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given, *ex-facie*, discloses the commission of a cognizable offence. If after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR".

10. Therefore, the moot question is (i) Whether opinion formed by the Investigating Officer that the material does not disclose

cognizable offence is binding on us ? and (ii)

Whether the information furnished and supplied to the Investigating Officer discloses the commission of cognizable offence ?

11. It may be stated that the result of an enquiry and the opinion formed by the Police Officer is not evidence in the eyes of law, as it is settled law that the findings of the trial Judge cannot be based solely on the result of investigation. This is for the simple reason that such an opinion or result of an investigation is not the evidence in terms of Section 3 of the Evidence Act. In the case of **Dalip Singh V/s. State of Punjab, (1997) 11 Supreme Court Cases 573**, the principles laid down in the case of **Vijender v. State of Delhi, reported in (1997) 6 Supreme Court Cases 171**, were reiterated and thus held :

“The result of investigation under Chapter

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XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent court to take cognizance thereupon under Section 190(1)(b) CrPC and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof."

12. In the case of *Vijender* (supra), the learned trial judge based his finding on the result of the investigation which was held not permissible. Thus, what is to be understood from the principles laid down in the case of *Vijender* (supra) is that the opinion of the Investigating Officer is not a conclusive proof of existence or non-existence of "fact".

13. In this case, statutory inspection of the Maharashtra State Co-operative Bank Ltd.

(respondent no.1) was conducted with reference to its financial position as on 31st March, 2010, by the National Bank for Agriculture and Rural Development (NABARD) under Section 35(b) of the Banking Regulation Act, 1949. The inspection report, as it appears therefrom, is based on the books and records presented by the Bank, the statements made during the course of inspection by the staff, the returns and other information furnished by the Bank and the information obtained by the Officers of the NABARD from other sources believed to be reliable. Mr. Paropkari, Deputy Commissioner of Police, attached to the Office of the Economic Offences Wing (EOW), Mumbai, leave alone the preliminary enquiry details, did not even mention whether, he has perused the statements of Bank employees on which reliance has been placed by the inspection team of the NABARD, while conducting the inspection of the respondent-Bank. Infact,

these statements and returns, form primary evidence, but it is apparent, that EOW of the Police, neither took pains to peruse the inspection report nor recorded the statements of employees of the Bank. It may be stated that, the foundation of the complaint is the Inspection Report of the NABARD, which is statutory in nature and thus it would carry presumption of correctness. The officer attached to the EOW, omitted to place material before us, in rebuttal of the presumption of correctness. It is in these circumstances, we are left with no alternative but to look into the Inspection Report of NABARD, as also, the report of Inquiry made under Section 83 of the Maharashtra Co-operative Societies Act and consequent chargesheet filed under Section 88 of the MCS Act against the erring officers, members of different committees (like, Loan Sanction Committee) and members of board of directors of the Bank.

14. One may attempt to argue that, whether writ can be issued to police authorities to register the offence, in as much as, the Apex Court has held and reiterated in All India Institute of Medical Science's case, the remedy available is by filing a complaint before the Magistrate.

15. We are aware of the judgment of the Apex Court in the case of **Aleque Padamsee V/s. Union of India, reported in 2007 (6) SCC 171** wherein it is held that, when the information is laid with the police but if no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code file the complaint before the Magistrate having jurisdiction to take cognizance of the offence. In para-7, the Apex Court has held thus :

"7. Whenever any information is received by the police about the alleged commission of offence

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which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences case, and reiterated in Gangadhar case the remedy available is as set out above by filing a complaint before the Magistrate."

16. The case of **Rashid Ahmed V. Municipal Board, Kairana**, reported in AIR 1950 Supreme court 163 laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, **K.S. Rashid & Son Vs. The Income Tax Investigation Commissioner** AIR 1954 SC 207 which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which

indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in **State of U.P. vs. Mohd. Nooh reported in 1958 SCR 595 = AIR 1958 SC 86**, as under :

"But this rule requiring the exhaustion of statutory remedies before the Writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in **A.V.Venkateswaran, Collector of Customs. Bombay vs Ramchand Sobhraj Wadhwani & Anr. reported in AIR 1961 SC 1506** and was affirmed and

followed in the following words :

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus preeminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

19. Another Constitution Bench decision in **Calcutta Discount Co. Ltd. vs Income Tax Officer Companies Distt.** I reported in AIR 1961 SC 372 laid down :

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting

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an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment. the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under 8.34 I.T.Act".

20. The aforestated rulings thus culled out the following two principles viz. namely (i) the exhaustion of statutory remedies before issuing the writ is a rule of policy convenience and discretion rather than rule of law, (ii) the decision of a High Court to entertain the petition is pre-eminently one of discretion, notwithstanding the existence of an alternate remedy and it is to be exercised when there are good grounds therefor.

21. In our considered view, this is not a case of rejection only on the ground of alternate remedy since rule of exclusion of alternate remedy is satisfied here. In the case in hand, it is not the

inaction of the police but refusal to register the FIR as in the opinion of the Investigating Officer, the material placed before him does not provide reason to suspect the commission of offence. In our view, before reaching such conclusion, the Officer concerned ought to have followed the mandate of the Code. The scheme of the Code of Criminal Procedure, 1973 provides that, if from information received or otherwise, the Officer has reason to suspect the commission of offence, which he is empowered under Section 156 to investigate, he is duty bound to send a report of the same to a Magistrate. Thus, the opinion of Mr. Paropkari in this case which concludes that a complaint does not provide "reason to suspect" commission of offence is one under Section 157 of the Cr.P.C. and that too without first registering the FIR, which is not permissible, as it runs contrary to Scheme of Chapter-XII of the Code of Criminal Procedure. Mr.

Paropkari, in this case, informed the Court that the material before him does not provide "reason to suspect commission of an offence" is an opinion, in exercise of discretion in terms of Section 157(1) of the Criminal Procedure Code which reads as under :

"157. Procedure for investigation.-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender."

Section 157(1) requires the Officer-in-charge of the Police Station who "from information received or otherwise" has reason to suspect commission of

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offence, that is a cognizable offence, he can investigate the matter under Section 156 Cr.P.C.

The Apex Court in the case of **Union of India and Anr. V/s. W.N. Chadha, AIR 1993 Supreme Court**

1082 has held in para-170 as under :

“170. It may not be out of place to state, in this context, that there are certain provisions in the Criminal Procedure Code which authorise a police officer to register a case and investigate the matter if there is any reason to suspect the commission of an offence or reasonable suspicion of commission of any offence. Section 157(1) requires an officer in charge of a police station who ‘from information received or otherwise’ has reason to suspect the commission of an offence - that is a cognizable offence, he can investigate the matter under Section 156. The expression “reason to suspect” as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Code, wherein the expression ‘reasonable suspicion’ is used. Therefore, what Section 157(1) requires is that the police officer should have ‘reason to suspect’ with regard to the commission of an offence. See Bhajan Lal (AIR 1992 SC 604)

. Therefore, what follows is that, the commencement of investigation in cognizable

offence by a Police Officer is subject to two conditions, firstly, the Officer should have reason to suspect the commission of cognizable offence as required under Section 157 (1) and secondly the Police Officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under Clause (b) of the proviso to Section 157(1). As Clause (b) of the proviso permits the Police Officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the Police Officer has to draw his satisfaction only from the materials which are placed before him at that stage, namely, the First Information Report together with the documents, if any, enclosed.

(State of Haryana V/s. Bhajanlal, AIR 1992

S.C. 604)

22. Thus, in this case, Mr. Paropkari when informs the Court that the material, does not provide reason to suspect the commission of cognizable offence, he has exercised the discretion under Section 157 without first registering the FIR under Section 154. Section 154 and Section 157 operate at different stages. Section 154 contemplates disclosure of cognizable offence and empowers the Officer-in-charge of the Police Station to register the offence, if the material placed before him, prima-facie, discloses the cognizable offence. Whereas Section 157, contemplates that before entering on investigation, the Investigating Officer has to satisfy himself as to whether there are sufficient grounds for entering on an investigation or not. Therefore, in our view, the statement of Mr.

Paropkari that the complaint does not provide a reason to suspect the commission of offence without first registering the FIR under Section 154 is contrary to the Scheme of the Code of Criminal Procedure and thus cannot be accepted. That even otherwise, Complaint and Inspection Report, prima-facie, discloses commission of a cognizable offence.

PETITIONER'S CASE/GRIEVANCE :

23. In these circumstances, we think it appropriate to narrate the grievance of the petitioner which is founded on the inspection conducted by National Board for Agricultural and Rural Development ("NABARD" for short), the enquiry conducted under the Maharashtra Co-operative Societies Act, 1960 ("the M.C.S. Act" for short) and the report of the internal auditors. Besides this, there is a complaint lodged by

Kakasaheb Bhosale in November, 2011 which is at page-1324 of the petition based on the inspection report of NABARD, complaint filed by the petitioner with the Assistant Commissioner of Police, Economic Offences Wing, Mumbai on 29th January, 2018, wherein he has summarized :
(i)illegality pointed out in the NABARD Report relating to sale of Sakhar Karkhanas and such other gross irregularities; (iii)offences revealed in the chargesheet filed under Section 88 of the M.C.S Act; and (iv)commission of offences as revealed in the audit report of M/s. Joshi and Naik Associates.

24. The respondent no.1 is Maharashtra State Co-operative Bank ("MSC Bank" for short) and its area of operation covers the entire State of Maharashtra. The Bank is included in the second schedule of the Reserve Bank of India Act, 1934. The statutory inspection of the respondent no.1

Bank was conducted with reference to financial position as on 31st March, 2010 by respondent no.2 under Section 35(2) of the Banking Regulations Act, 1949. The Accounts of the Bank were audited by M/s. Joshi & Nair Associates, a Chartered Accountant firm for the financial year ending on 31st March, 2010 and the Bank was classified as 'D' class in the audit (i.e. "a weak bank"). The petitioner relies on this report. According to the petitioner, the inspection report has disclosed the existence of many deficiencies in the working and functioning of respondent no.1 and also highlights the fraud committed by its Directors. The respondent no.11 onwards are the ex-Directors of the respondent Bank. Respondent no.3 is a Commissioner for Co-operation and Registrar for Co-operative Societies, Maharashtra State; whereas, respondent no.4 is the Chief General Manager, Reserve Bank of India.

25. The Chief Manager, Reserve Bank of India by order dated 4th May, 2011 in exercise of the powers under Section 110A of the M.C.S. Act directed to supersede the Board of Directors of the MSC Bank-respondent no.1 and further to appoint an Administrator to look after the affairs of the respondent no.1 Bank. In view of the directives of the RBI, the Commissioner of Co-operation and Registrar of Co-operative Societies appointed the Board of Directors consisting of Dr. Sudhir Kumar Goel, Principal Secretary in Agriculture and Marketing and Shri. Sudhir Srivastava, Principal Secretary, (Planning) vide its order dated 7th May, 2011. The RBI issued these directives in view of the deficiencies pointed out in the audit report of 2009-10 in the Annual Inspection Report of NABARD. At the relevant point of time, the respondent no.1-Bank was managed by the Board of Directors

consisting of forty eight members, most of whom were MLAs and MPs of the Ruling party. The petitioner alleges that, due to the irregularities of the Members of the Board of Directors, the Bank had showed both, negative growth and development.

26. It may be stated that, inspite of the glaring irregularities disclosed in the audit report of NABARD, the then appointed Board of Directors surprisingly in its press-note dated 7th May, 2011 declared :

"The liquidity position of the Bank is adequate to meet its demands towards deposits. There is no cause for concern for the depositors. As per statutory audit for the year 2009-10 negative networth of Rs.144.22 crores for the bank in March 2011 on the request of the Bank State has provided Rs.270 crores to take care by the networth. The financial condition of the bank is sound and depositors need not have any concern. The decision to appoint an administrative board is primarily directed to strengthen further the financial condition of the bank and bring professionalism and transparency in its work. The State Government is committed to further strengthen the financial condition of the Bank."

IRREGULARITIES-DEFICIENCIES IN NABARD INSPECTION REPORT :

27. We thus highlight some of the deficiencies and irregularities as disclosed in the report of the NABARD.

“(i)Sanctioned credit limits to those units having negative networth/NDR and short margins without ensuring irrevocable unconditional default guarantee from State Govt.

(ii) Sanctioned loans/credit limits without obtaining credit authorisation from NABARD for financing of Infrastructure Projects and CC limits to Cotton Marketing Federations and St Loans to MSEDCL in violation of extant CMA (Credit Monitoring Arrangements) guidelines .

(iii)Sold properties of borrowing units acquired under SARFAESI Act, 2002 below the reserve price.
(emphasis supplied)

(iv)Distributed incentive to co-operative societies/bank towards Centenary year celebration despite the fact that the bank had not declared dividend for the past several years.

(v) Sanctioned loan/additional loans contrary to Department's recommendations in violation of CMA guidelines.

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vi. Waived/allowed interest rebate without provision in bye laws/ MCS Act/ Rules.(emphasis supplied)

Vii. Extended due date of repayments to conceal NPAs. (emphasis supplied)”

IRAC norms and mounting NPAs :

The Bank had violated IRAC and provisioning norms, as a result of which, the accounts did not reflect a true picture of its financial position as on 31 March 2010. An amount of Rs.66390.59 lakh pertaining to loans and advances (NPAs) and Rs.8035.91 lakh pertaining to overdue interest receivable and provision thereagainst were removed from balance sheet thereby camouflaging the NPA position. There was shortfall in provisioning in respect of non performing assets and also item of liabilities to the tune of Rs.77886.16 lakh as on 31st March, 2010. The high level of NPAs at 31.2% as on 31 March 2010 was a matter of serious concern. Of the total impaired credits, as high as 66.8% of gross impaired credits were under loss/unsecured category, forming 20.9% of total loans and advances outstanding as on that date.

Other adverse features

(i)No discernible change in status of 86 cases filed under SARFAESI Act, 2002 involving an amount of Rs.2806.96 crores was noticed.

(ii)The bank had continued violation of CMA

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guidelines.

(iii) The bank had not monitored high value account like Priyadarshini SSG which turned into NPA.

(iv) CD Ratio of branches at 1.76% reflecting negligible earning from branches.

(v) Non-implementation of Board decisions such as firming up staffing pattern for 2010-15 and selling expeditiously properties of SSKs against which action under SARFAESI Act, 2002 was initiated.

(vi) The bank did not initiate action under MCS Act, 1960 against the Directors / Ex-Directors, who had jointly and severally stood as surety / guarantee for the clean loans provided to these units.

(vii) The realizable value of assets at Rs.240897.66 lakh was less than the entire outside liabilities at Rs.2423393.82 lakh as on 31st March, 2010.

(viii) Non compliance with section 29 and 31 of Banking Regulations Act, 1949 (AACS) shows that the Balance Sheet and Profit and Loss account of the bank for the year 2009-2010 were not drawn properly and were not reflecting true and fair picture of the bank in view that (i)The Bank had continued to exclude NPAs amounting to Rs.663.91 crores from the balance sheet, despite being pointed out repeatedly in report and no steps are taken to correct position and the bank continued to show the

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same trend as per footnote besides the Balance Sheet (emphasis supplied).

(ix) The Bank had debited the General Reserved by Rs.14400.00 lakh and credited to NPA provisions. This had camouflaged the NPAs of the Bank and defeated the accounting norms. By doing so it has weakened its networth which has become negative (emphasis supplied).

(x) The Bank had appropriated Rs.300 lakhs towards centenary year co-operative movement development Fund from profit of Rs.1778.12 lakh for the year 2008-09 and distributed @ 1% of share capital to all the borrowing co-operatives. Thus the decision to appropriate Rs.300 lakh towards the above fund was not in accordance with the provisions of bye laws and the bank has violated bye law no.63 (i), (iii) and it shows criminal attitude of Board of director, who had vested interest in creating such unlawful entry. (emphasis supplied)

(xi) The bank continued providing finance to units having weak financial position like negative net worth, negative NDR, having current as well as accumulated losses, short margins and other adverse features in operations in cash credit accounts and defaults in repayment of loan without insisting submission of unconditional and irrevocable default guarantee from state government.

(xii) The bank has not ensured execution of

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mortgage of property as security before allowing disbursement of term loan in many cases of sugar/spinning mills financed.

(xiii) Delays were observed in taking legal action in case of defaults by borrowing units where Board of Directors either directly or indirectly interested. (emphasis supplied)

(xiv) The bank had sanctioned pre seasonal loans and short term loans as unsecured loans to Sahakari Sakhar Karkhanas (SSKs) having negative net worth. The Directors, owning responsibility for repayment of loan joint or severally, provided Declaration to that effect signed jointly in presence of Notary. The bank has not initiated legal action based on the above documents so far. The Bank had delayed action against the Directors of the defaulting units based on the above joint declaration of owning liability (All units defaulted in repayment of ST loans). (emphasis supplied)

(xv) Medium Term Loan to Majalgaon Dugdha Vyavasayik Gramin Bigar Sheti Sahakari Patsanstha. (violation of provision of legal act) M.S.C.S. Act.

During the year 2009-10, the bank had sanctioned MT loan of Rs.700.00 lakh to the above credit society engaged in business of providing credit to milk producers. The above society is prima-facie a primary credit society. There was no provision in banks loan policy for sanction of loan to primary societies. It was observed that overdue loan from members at society level were 50% of loans o/s as on

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31st march, 2010. The borrowing society had non utilized entire funds in business. The above loan was provided on security of Majalgaon SSK.

(xvi) Fixing of reserve price less than the market value and delay in receiving payments, etc. In respect of few units cited in the said reports.

(xvii) Selling of industrial units at prices lower than the reserve price fixed by the bank continued to be witnessed during the year 2009-2010 also. (e.g. Kondeshwar SSK and many others).(emphasis supplied)

(xviii) VEHICLES :

(a) The Chairman and Vice Chairman were given 2 vehicles each (in the name of one for office and one for residence) implying thereby use of vehicle for other than official purposes. Also the bank had provided one vehicle to the Hon'ble Minister for Cooperation, Govt. of Maharashtra, on a permanent basis, though no request in this regard from the ministry was on record of the bank.

(b) The bank had purchased a car (Honda Accord) for the use of the Managing Director at Rs.21.25 Lakhs and paid of Rs.75,000/- and for a fancy number plate during the year, which was not a prudent decision.

(c)The bank had also paid hefty amount for fancy numbers plate in respect of 2 vehicles each under use of Chairman and Vice Chairman as per details given therein (why & who is responsible for loss to exchequers by such illegal payments)

(d) In past also, the bank was making additional/hefty payments for obtaining fancy numbers plate for its cars for the use of its chairman and vice chairman.

(xix) MANAGEMENT SYSTEM :

. The present board consisted of 45 members. (now it is superseded by the Administrator) NABARD has been consistently pointing out that the composition of Board is too large. The management audit report of IIM, Ahmedabad also recommended to reduce the Board size to a compact numbers. The bank has not acted upon the said advise because of vested interest of Bank Board, Member & against public interest.

. The role played by BOD was found to be unsatisfactory in view of essential features as indicated in the said report.

. Some of the decisions taken by the Board were found to be not in conformity with NABARD guidelines/prudential banking norms which are enumerated from page no.121 to 130 of the said report.

(xx) Waived/allowed interest rebate without provision in Bye-laws/MCS Act/ Rules to that effect. This had concealed unrealizable interest and loan recovery and NPA position in crores. This requires investigation by CBI

(xxi) Extended due date of repayment to cancel NPA

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position without any justification which again conceals unrealized interest/loan recovery and NPA position in crores and requires CBI investigation an such illegal activities an loss to public funds.

(xxii) Sanctioned limits to certain selected units in which certain directors are interested and which are having negative Net worth/NDR and short Margin without procuring irrevocable unconditional default guarantee from state government and which action has amount to concealing sizable amount of N.P.A. in cores in terms of amount and high percentage. This require full investigation by CBI. This is illegal and against Public Interest.

(xxiii) Sold Properties of Borrowing Units acquired under SARFAESI Act, 2002 below reserve price. This appear to have been done to serve interest of some influential directors and this has increased NPA position of Bank further and requires through investigation by CBI with intention to uncover criminal intentions as such actions are illegal and against Public Interest.

(xxiv) As on 31st March, 2010, An amount of Rs.66,390.59 lacs pertaining loans and advance (NPA) and Rs.8035.91 Lacs pertaining to over due interest receivable is removed from Balance Sheet, which is an obvious action to conceal facts and which appears to be at instance and direction of influential directors. This had undermined true NPA position. This criminal act has to be investigated thoroughly by CBI and this undermined Public Interest. (emphasis supplied)

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(xxv). It is reported that Bank has not monitored high value account like Priyadarshini SSG which has become N.P.A. which leads to believe that Directors and Banks Higher Management were not concerned about handling sensitive advances of this kind and also not concerned of public accountability on account of its own politics.

(xxvi) Not pursuing of 86 cases filed under the SARFAESI Act amounting to Rs.3806.96 lacs. These original advances were made mostly at the instances of influential directors. This fact also require through CBI investigation.

(xxvii). Bank has not bothered to obtain credit authorization beforehand from NABARD while sanctioning infrastructure projects. This hurry seems to be not only unwarranted but seems to be intentional as those projects appear at the instances of main directors. This requires thorough probe.

(xxix). Despite pointing out repeatedly by NABARD, Bank has omitted purposely an NPA amount of Rs.663.91 crores (sizable portion) from Balance Sheet from last few years and is showing the details of it in a foot note. Intention of such act is to conceal NPA & requires probing thoroughly by CBI."

28. Without burdening the judgment with further details, we reproduce paras-27 to 57 of the complaint which furnish the details and

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particulars of the loan sanctioned to the Units either owned or managed by the relatives of the Directors of the Bank. They read as under :

"27. The following SSKs or Private Ltd. companies were illegally given loans without securing any charge, at subsidised interest rates, whose loans were restructured, solely because some of the directors of the Board had financial or personal interest in these Units:

S. No	Name of the Director of MSCB	Name of the Unit	Relationship with the Director
1	Shri. M.M. Patil	Aditya Fresh Food Natural Pvt. Ltd.	Relative of the present Chairman
2	Shri. Gangadhar Kunturkar (Ex-member of the BOD of MSCB)	Jai Ambika SSK	Chairman of SSK, unit defaulted
3	Prithviraj Deshmukh (Ex-member of the BOD of MSCB)	Dongrai SSK	Chairman of SSK, defaulted unit
4	Shri. Madhukarrao Chavan (Ex-member of the BOD of MSCB)	Kulswamini SSG	Office bearer of SSG
5	Shri. Dr. S.W. Korpe (Ex-member of the BOD of MSCB)	Akola SSK	Office bearer of SSK
6	Shri. Suresh Deshmukh	B. Deshmukh SSG B. Deshmukh SSK	Office bearer of SSK
7	Smt. Rajni Patel	PDVV SSK, Beed	Office bearer of SSK

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8	Shri. N. V. Sarnaik	Rajivji SSG	Office bearer of SSK
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28. The illegalities committed by the Bank while sanctioning the loans to the said Units wherein the directors of the MSC Bank had interest are as under:

Jai Ambika SSK, Kuntur, Nanded (NABARD Report pp.113, 122, 130, 136, 182, 183): (Charge Sheet u/s 88): (Enquiry Report u/s 83: 90,209,211,210) : (Joshi Nair Audit Report: 42, 126,130)

29. Shri. Gangadhar Deshmukh Kunturkar, one of the director of MSC Bank was also the Chairman of the Jai Ambika SSK, Nanded.

30. Despite the Unit having negative net worth, accumulated losses and short margin, an amount of Rs. 94.92 crores was illegally extended as loan that too without obtaining any collateral or security by the Board of Directors in its meetings held on 23.12.08, 18.02.08, 22.01.10 and 22.04.08. As a matter of fact, in all the meetings held on 23.12.2008, 18.02.2008, 22.01.2010 and 22.04.2008 wherein the loans were sanctioned, **Mr. Gangadharrao Kuntunkar** along with other members of the Board viz. **Shri. Ajit Pawar, Manikrao M. Patil, D.M. Mohol, Prithviraj Deshmukh, Arvind Poredivar, Madhav rao Chavan, Nitin Patil, Rajnitai Patil, Ushatai Patil, Shailaja More,** as enlisted in chart-I were present. Moreover, the entire loan amount was **dishonestly** sanctioned without even obtaining

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Default Government Guarantee.

31. The aforesaid directors **dishonestly sanctioned** the loan without obtaining any collateral or security and default Government Guarantee **in sheer violation of the RBI Regulations and NABARD CMA guidelines** only with an intention to **cause wrongful gain to Shri. Gangadhar Kunturkar**, who was the then chairman of Jai Ambika SSK thereby **causing wrongful loss the bank**.

32. The **mens rea** of the directors in sanctioning the loan is determinable from the fact that not only the loans were sanctioned despite **having knowledge of the negative net worth and the accumulated losses of the Unit**, but also that an attempt was made to **camouflage the NPA Accounts** of the Bank by not showing the said transactions in the periodical reports of the Bank.

33. Central Government had launched various schemes/packages for revitalisation of sick cooperative sugar factories. The abovementioned Board of Directors only with an intention to **cause wrongful gain** to one of them and save their skin, converted the Mid Term Loan (MT Loan) granted to the SSK into Working Capital Term Loan (WCTL) despite it **being not covered under the package**, thereby extending a helping hand to the SSK by deferring the repayment of loan over a longer period in its meetings held on **29.02.2008, 12.03.2008, 22.04.2008 and 01.07.2008**.

Aditya Fresh Food Natural Ltd. (NABARD Report

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pp. 130,56,127,188,260): (Charge Sheet u/s 88): (Enquiry Report u/s 83: 115-118) : (Joshi Nair Audit Report:115,114,116)

34. **Shri Manik Mohanrao Patil** was the Chairman of MSC Bank. During his tenure as Chairman he enjoyed various discretionary powers given by the Board of Directors. As such, various transactions were undertaken by him without consulting the Board of Directors.

35. An amount of Rs. 1.94 crores was **illegally sanctioned** in favour of Aditya Fresh Food Natural Pvt. Ltd., whose director Smt. Prabhavati Manikrao Patil was the wife of Shri. Manik Mohanrao Patil-the Chairman of the Bank under the scheme 'Micro/Small Scale Aatmanirbhar Yojana', despite the fact that the Unit was not eligible to avail loans under the said scheme by the Loan Committee in its meetings held on 29.02.2008, 12.03.2008, 24.04.2008 and 01.07.2008 by the Board of directors namely, Shri. Ajit Pawar, Shri. D.M. Mohol, Shri. Arvind Poredivar, Shri. Babasaheb Vasave, Shri. Prithviraj Deshmukh, Madhavrao M. Patil, Manikrao Patil, Madhukarrao Chavan, Madhukarrao Patil, Rajnitai Patil, Ushatai Patil, Shailaja More, Vilasrao Patil, Rajendra Patil;.

36. Furthermore, the due date for payment of the first installment of the loan was **dishonestly extended** by the Loan Committee in its meeting held on 13.05.2009, despite a

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contrary recommendation of the Agro Department and NABARD.

37. The account of the Unit was rescheduled and the interest rates were brought down from 8.5% to 8% per annum without any reasoning.

38. Moreover, in the meeting held on **21.05.2009**, the condition relating to transfer of the land in the name of promoters in the company's name and to obtain NA certificate was **dishonestly** relaxed so as to not create charge over the properties thereby causing **wrongful loss** to the bank.

39. Furthermore, no action whatsoever is taken against the Unit owned by the wife of the Chairman despite report of the auditors that the sale proceeds were not credited to the CC (Hypo) a/c with the Bank making it a classic example of defalcation of funds. The illegal sanctioning of the loan amount to the Unit has caused a loss of Rs. 3,27,280 lakhs to the bank. Further the loan came to be granted in favour of Aditya Fresh Food Natural Pvt. Ltd. only and only because the chairman of the Bank had an interest in the said Unit.

**Dongarai SSK:(NABARD Report pp.130,186):
(Charge Sheet u/s 88): (Enquiry Report u/s
83: 1,16-20,61-62, 98, 19) : (Joshi Nair
Audit Report:42, 110, LEAR-11,120, 121)**

40. Shri. Prithviraj Deshmukh was the Government appointed Director of the MSC

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Bank. Being a representative of the Government, Shri. Prithviraj Deshmukh held the office of the director in dual capacity. As such, it was expected from Shri. Prithviraj Deshmukh to ensure that the loans were disbursed in the best interests of the State and the Bank. Per contra, Shri. Prithviraj Deshmukh rather than securing the best interests of the State as well as the borrowers, had acted contrary to the interests of Bank as well as State. The case of Dongarai SSK, of which Shri. **Prithviraj Deshmukh** was the director, is one of the best illustration as to how the directors of the Bank looted it.

41. As on 31.03.2013, an amount of Rs. 200 Cr. became outstanding in account of Dongrai SSK since the loans were sanctioned by the loan committee without securing mortgage or charge over the properties. The original LT loan of Rs. 200 Lakhs was sanctioned on 24.02.1999 by the Loan Committee consisting of Shri. Ajit Pawar, Shri. N.V. Sarnaik, Madhukarrao Chavan, Shri. Gangadhar Kunturkar, Shri. Manikrao M. Patil, Shri. Rajni Patil, Shri. Anandrao Chavan, Shri. Poredivar, Datrataya Patil, Diliprao Patil including Shri. Prithviraj Deshmukh.

42. The loans by way of pledge were sanctioned to the SSK on the basis of the sugar stock which was valued at the rate of Rs. 2477.55 lakhs. However, during field

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visit by the auditors in Feb, 2010, it was revealed that there was a short margin to the extent of Rs. 1197.80 lakhs. **Shri. Prithviraj Deshmukh** being the director of the SSK having complete knowledge regarding its sugar stock fraudulently showed the same to be 2477.55 lakhs and availed the loan from the Bank. As such, the SSK (office bearer of which is the director of the Bank) made a fraudulent/dishonest representation to the Bank which was acted upon by the institution to its detriment which caused wrongful loss to the bank.

43. In a brazen attempt to dupe the entire loan amount, and escape repayment, the SSK came to be converted into a public limited company in the name of "Cane Agro Energy Ltd. that too without taking permission of the Bank on 25.05.2007. The BoD (77 directors as enlisted in chart-) of the Bank did not take any steps to register its charge with ROC to secure its various debts under different types of loans granted to the SSK now converted into a public limited company. As soon as the Unit was converted into a company, the Government withdrew the guarantee given by it. As such, the entire amount of Rs. 200 Cr. was written off by the Bank. The BoD intentionally turned a blind eye towards the entire scheme of conversion of the SSK to a company and did not take any action against the company despite having complete knowledge that the entire loan amount is unsecured resulting into zero recovery with a view to

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cause unlawful gain to one of its Directors, **Shri. Prithviraj Deshmukh**. Not even a single penny was repaid which was sanctioned to Dongrai SSK.

Pad. VVK Patil SSK, Beed: (NABARD Report pp.45, 130, 191): (Charge Sheet u/s 88): (Enquiry Report u/s 83: 48,49,3,5,6,98) : (Joshi Nair Audit Report:134)

44. Smt. Rajni Patil is the director of Pad. VVK Patil SSK, Beed who was also holding the portfolio of director in the Bank at the relevant time. The SSK was given extensions for repayment of loans repeatedly in the year 2008-2009 as well as 2009-2010 by the loan Committee consisting of **Shri. Ajit Pawar,** **Shri. N.V. Sarnaik, Madhukarrao Chavan, Shri. Gangadhar Kunturkar, Shri. Manikrao M. Patil, Shri. Rajni Patil, Shri. Anandrao Chavan, Shri. Parodivar, Dattrataya Patil, Diliprao Patil** despite the fact that there was no past recovery and that the SSK was incurring losses.

M/s PNP Maritime Services Pvt. LTd. and M/s Merian Frontiers:(NABARD Report : 98)

45. Bank guarantees of amount of Rs. 75.00 Lakhs and 2375 Lakhs were issued on behalf of M/s PNP Maritime Services Pvt. Ltd. and M/s Merian Frontiers, who were not the clients of the Bank without obtaining any security only because the proprietors of the said two firms were **Shri. Nrupal Jayantrao Patil**, who was the son of **Shri. Jayantrao**

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Patil, one of the directors of the Bank.

**Rajivji SSG: (NABARD Report pp.130,
121,122):(Joshi Nair Audit
Report:116,117)**

46. An amount of Rs. 5.34 crores was sanctioned towards additional loan in favour of Rajivji SSG, Kolhapur for raising its equity of Rs. 4.96 crores. Though only 50% share was to be contributed by SSG, the entire amount of Rs. 4.96 crores was reckoned while estimating the loan requirement, thereby enabling the SSG to avail 50% extra amount. Furthermore, the **CEO, Shri. D.M. Mohol**, with view to provide assistance to the SSG in availing the loan did not put the fact in the Agenda that the said account of Rajivji SSG was identified under sub-standard category in the NABARD Inspection Report. The entire exercise was undertaken by the Board (consisting of Shri. Ajit Pawar, **Shri. N.V. Sarnaik**, **Madhukarrao Chavan**, **Shri. Gangadhar Kunturkar**, **Shri. Manikrao M. Patil**, **Shri. Rajni Patil**, **Shri. Anandrao Chavan**, **Shri. Arvind Parodivar**, **Datrataya Patil**, **Diliprao Patil**) in connivance with the then **CEO, Shri. D.M. Mohol** in its meeting held on 19.05.2009 only to avail unlawful gain of more Rs. 4.96 crores to the **Vice Chairman, Shri. N.V. Sarnaik** who was the office bearer of the said SSG.

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47. Furthermore, the Unit has opened bank accounts with Shripat Datta Sahakari Bank without the permission of the Director of the Textile Industries, Nagpur as well as MSCB. The Unit is also banking with IDBI, Kolhapur, State Bank of India, Kolhapur and KDCC Bank, Kolhapur without the permission of the MSC Bank. **Shri. N.V. Sarnaik** who is the Vice Chairman of the Bank despite having complete knowledge of the said transactions did not deem it necessary to follow the guidelines prescribed by RBI as well as NABARD. Furthermore, the bank as well did not initiate any action against the SSG.

48. Although the working capital limit was sanctioned against pledge of raw cotton and stock of yarn, the Unit was not pledging the stock of yarn. Further, the Unit was also not depositing the sale proceeds of cotton seeds. Despite such findings reflected in the audit reports, the Board of Directors (as enlisted in chart-I) has not taken any steps against the Unit.

49. Furthermore, the SSG did not pay the interest amount of Rs. 101.22 lakhs for the quarter ended on 31.03.2010. However, no action was taken by the Bank against the SSG for effecting recovery of such interest amounts.

**Swa. Bapurao Deshmukh SSG: (NABARD
Report pp.130, 127, 180)**

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50. The loan committee in its meeting held on **23.03.2010** had resolved to sanction CC pledge limit of Rs. 20.30 crore to Swa. Bapurao Deshmukh SSG, Wardha, which was already having negative net worth as well as short margin despite the fact that the State Government had already communicated that it shall not provide guarantee to the said loan. The very decision was taken by the Loan Committee consisting of Shri. Ajit Pawar, Gangadharao Kuntukrar, Shri. D.M. Mohol, Shri. Nitin Patil, Shri. Madhukarao Patil, Manikrao M. Patil, Ushatai Patil so as to avail Shri. Suresh Deshmukh, an office bearer of the said SSG, who was also a Director of the Bank.

Other instances of illegal Loans sanctioned to Cooperative Sugar Factories:

51. It is the duty of the Loan Committee in particular as well as the General body of MSCB Directors to ensure that all the loans are sanctioned in accordance with law and after securing the necessary collaterals to such loans. The Loan Committee is bound to follow the CMA guidelines of NABARD and the RBI Regulations before sanctioning any loan. However, the Loan Committee sanctioned the loans without ensuring that whether there was any need of such loans or whether such borrowing units were in a

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position to pay back the debts. The Loan Committee disposed away the amount held by it in trust of the Bank so as to avail wrongful gains to the borrowers who were either directors of the Board or were political bigwigs and thereby caused wrongful loss to the Bank, details of the which are found in the reports enclosed herewith.

52. The Loan Committee sanctioned loans to the Cooperative Sugar Factories having negative net worth, accumulated losses, short margin which were run by political bigwigs in violation of the Credit Monitoring Arrangement of NABARD during the period 2007-08, 2008-09 and 2010-11 causing a loss of Rs. 297.14 crores to the Bank. Further, the Bank did not ensure that the said loans were secured by creating collaterals or by securing default Government Guarantee. All the loans were sanctioned despite there being remarks regarding the same in each and every inspection report of NABARD as well as other audit reports. The Loan Committee which was entrusted with the money of the Bank dishonestly sanctioned the loan amount to the following SSKs without securing any collateral charge over their properties and without obtaining Government Guarantee in sheer violation of the CMA guidelines prescribed by NABARD:

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Sr. No.	Name of the SSK	Chairman of the SSK	Loss caused to the Bank (in Crores)	Date of meetings	Name of the directors present
1.	Satpuda Tapi SSK, Nandurbar	P.K. Anna Patil (MP, MLA- NCP)	129.16	31.03.2009 15.04.2009 19.05.2009 18.08.2009 17.12.2008 07.01.2009 18.02.2009 19.05.2009 10.09.2008 24.09.2008 08.10.2008 23.12.2008 29.02.2009 12.03.2008 22.04.2008 01.07.2008 13.02.2008 29.02.2008 22.04.2006 01.07.2008 16.08.2008 10.09.2008 08.10.2008 23.12.2008	Ajit Pawar Anandrao Chavan Ankush Pol Arvind Poredhuwar Babasaheb Basave D M Mohol Datray Patil Dhananjay Dalal Diliprao Deshmukh Gangadharrao Kuntulkar Gulabrao Shelke
2.	Hutatma Jaywantrao Patil SSK, Nanded	Suryakanta Patil, (MP- NCP)	28.54	31.03.2009 15.04.2009 19.05.2009 18.08.2009 17.12.2008 07.01.2009 18.02.2009 19.05.2009 10.09.2008 24.09.2008 08.10.2008 23.12.2008 29.02.2009 12.03.2008 22.04.2008	Jagganath Patil Jayant Patil Jitendrasingh Rawal Madhukarrao Chavan Manikrao M Patil N. D. Kamble Nandkumar Dhote Nitin Patil Prithviraj Deshmukh

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				01.07.2008 13.02.2008 29.02.2008 22.04.2006 01.07.2008 16.08.2008 10.09.2008 08.10.2008 23.12.2008	Rajendra D Jain Ravindra Shetye Nilesh Sarnaik Kiran Deshmukh
3.	Nrusinh SSK, Parbhani	Suresh Varpurkar (Ex- Minister, NCP)	32.36	10.09.2008 24.09.2008 08.10.2008 23.12.2008 24.09.2008 14.10.2008 23.12.2008 18.02.2009 17.12.2008 07.10.2009 19.05.2009	
4.	Sangola SSK, Sangola	Ganpatrao Deshmukh (SKP)	26.58	13.02.2008 29.02.2008 22.04.2008 01.07.2008 24.09.2008 14.10.2008 23.12.2008 16.02.2009 17.12.2008 07.01.2009 18.02.2009 19.05.2009 10.09.2008 24.09.2008 08.10.2008 23.12.2008	
5.	Jai Jawan Jai Kisan SSK, Latur	Basvaraj Patil Nagarakar; Manikrao Patil;	50.70	16.08.2008 10.09.2008 08.10.2008 23.12.2008 13.02.2008	

		Sambajirao Patil (Congress)		25.02.2008 22.04.2008 01.07.2008 26.03.2008 09.04.2008 22.04.2008 01.07.2008 24.09.2008 14.10.2008 18.02.2009 31.03.2009 15.04.2009 19.05.2009 18.08.2009 17.12.2008 07.01.2009 18.02.2009 19.05.2009	
6.	Shri. Santnath Bhogawati SSK	Dilip Sopal, (Director of Bank) Ex-minister, NCP)	3.99	17.12.2008 07.01.2009 18.02.2009 19.05.2009 13.02.2008 29.02.2008 22.04.2008 01.07.2008	
7.	Devgiri SSK, Aurangabad	Namdevrao Gade, NCP	19.33	31.03.2009 15.04.2009 19.05.2009 18.08.2009 17.12.2008 07.01.2009 19.05.2009 21.05.2008 04.06.2008 01.07.2008 29.02.2008 12.03.2008 22.04.2008 13.02.2008 29.02.2008 23.02.2011	

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				12.03.2011 28.03.2011 01.06.2011	
8.	Swami Samarth SSK	Siddharam Mhetre (Ex- Minister, NCP)	6.44	26.03.2008 09.04.2008 22.04.2008 01.07.2008	
	Total		297.14		

53. The Loan Committee approved and sanctioned additional working capital limits at the fag end of the financial year to SSKs despite having complete knowledge that the crushing activity was almost over in its meetings held on 15.02.2010 and 23.03.2010. Despite being pointed in several NABARD Inspection Reports, the Loan Committee without assigning any just and prudent reasons, kept on sanctioning enhancement in additional working capital limits to the SSKs. Shockingly, the Loan Committee enhanced such limits in some of the cases consequently in its meetings held on 15.02.2010 and 23.03.2010 which were also having negative net worth, causing wrongful loss to the Bank. Some of the details are given in this statement but more details are found in the reports enclosed herewith.

54. The following are the SSKs whose additional working capital loan limit was enhanced twice in the form of pledge by the loan committee:

Sr.	Name of the	15.02.2010	23.03.2010
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No.	SSK	Existing	Enhanced	Existing	Enhanced
1.	Appasaheb Nalavade Sahakari Sakhar Karkhana (Negative Net Worth/NDR)	7000	8200	-	450
2.	Kranti SSK, Kolhapur	8000	11000	5000	8000

55. The Loan Committee has **played a fraud on the statute as well as the co-operative governance structure** in sanctioning illegal loans, whereas the general body of the Board of Directors of MSCB are equally responsible for not making the Loan Committee accountable for its mistakes and recovering the loans made out without following due process of law and only with a view to pocket funds by giving loans to units in which some directors held a financial or personal interest.

56. The general body of Board of Directors has acted hand in gloves with the Loan Committee and turned a blind eye towards the naked brazenness committed by the Loan Committee."

Description	Page No. (of the complaint)	Para (of the report)	Persons involved	Criminal provisions attracted
48% of outstanding loans by MSCB were to sugar mills i.e. nearly Rs. 3908 Crores.	26	Chart No. 2 Para. 3.4.3	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past.	S. 418, 420, 425, 34, 109 and 120B of IPC

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● MSCB has falsely shown Rs 2.87 Crores net profit whereas as per correct accounting procedure and IRAC norms there was infact a net loss of Rs.775 crores. NPA's were intentionally not mentioned in balance sheet. ● No review of loans advanced to Sugar Sector. ● No action taken by bank under Maharashtra Co-operative Societies Act, 1960 against the Directors, Ex-Directors who had jointly and severally stood as surety for the clean loans.	519	Para 2.7	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past	S. 418, 420, 34, 109, 120B of IPC. 13(c) PC Act.
	519	Para 2.9		
	518	Para 2.4 (iii)		
	520	Para 2.9 (xiii)	Shri. Sharad Pawar (Criminal Conspiracy and abetment since all the decisions of MSCB were at his behest)	120 B
● Loans sanctioned to ineligible units and without proper examination. ● No credit risks and operational risks analysis.	557	Para D (i)	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past.	405, 418, 423, 34, 109, 120B of IPC 13 1 (c) PC Act.
	557	Para D (iii)	Shri. Sharad Pawar (Criminal conspiracy and abetment)	120 B
Pre-seasonal loans were sanctioned contrary to NABARD policy.	43- 44	3.4.11	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past. Shri. Sharad Pawar (Criminal conspiracy and abetment)	405, 418, 34, 109, 120B of IPC 13 1 (c) PC Act.
● The bank did not ensure observance of financial discipline by CSF's. ● Loan to defaulting units (Rs. 45.88 Cr. default) illegally sanctioned. (Padmashri V V Patil SSK, Kaij, Jai Ambika SSK, Udaysing Gaekwad SSK, Kannad SSK, S P Nilangekar SSK, Jai	44- 45	3.4.13	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past.	418, 34, 109, 120B of IPC
	45- 46	3.4.14		

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Jawan Jai Kisan SSK and Swargiya Baburao Deshmukh SSK) - Irregularities in sanctioning of Short Term Loans- I. No norms to assess quantum of loans. II. Loans were sanctioned without obtaining any collateral security from the CSF's. - Deviations in pledge advances were noticed. - Bank had diluted many of the important terms and conditions and allowed CSFs drawal from pledge limit. - The bank accepted joint and several liability bond of the Directors of the CSFs.	46- 47 47- 48 47	3.4.15 (A) 3.4.16 3.4.16 (i)	Board of Directors of Padmashri V V Patil SSK, Kaij, Jai Ambika SSK, Udaysing Gaekwad SSK, Kannad SSK, S P Nilangekar SSK, Jai Jawan Jai Kisan SSK and Swargiya Baburao Deshmukh SSK. 77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past All Directors of the CSF's which gave personal liability for securing loans. Shri. Sharad Pawar (Criminal conspiracy and abetment)	405, 418, 34, 109, 120B of IPC 13 1 (d) PC Act. 418, 421, 34, 109, 120B of IPC 13 (1) (C) PC Act 405, 418, 34, 109, 120B of IPC 13(1) (d) PC Act. 120B
Extended Repledge credit limits to Solapur DCCB to the tune of 3500 lakhs, even though the latter had sanctioned/disbursed loans violating the sectoral/unit exposure norms.	569	1.4.19	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past Board of Directors of Solapur DCCB as mentioned below.	418, 423, 425, 405, 34, 109, 120B of IPC 13(1) (c) PC Act. 418, 423, 425, 34, 109, 120B of IPC 13(1) (c) PC Act.
Shortcomings in monitoring of sugar package: - Some of the units had run below the minimum capacity of utilization of @75%/80% during the sugar season 2007-08, 2008-09, 2009-10/ - The bank had not ensured improvement in cane procurement from members of CSF. - Also, the bank had not ensured that the payment of	52	3.4.25 I li Vi	Board of Directors of defaulting CSFs 77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1	418, 423, 425, 405, 34, 109, 120B of IPC 13(1) (c) PC Act. 418, 34, 109, 120B of IPC 13 (1) (c) PC Act.

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sugarcane price by the CSFs was as per the Standard Minimum Price.			belonged to BJP and 2 belonged to Shivsena)) and several others in past	
Observations made on sanctioning of medium term loans to Majalgaon SSK, B. Ambedkar SSK, Kranti SSK, Vikas SSK, Sanjivani SSK, Bhima SSK, Daund SSK, V. Shinde SSK: - The bank sanctioned projects without ensuring the availability of appropriate machinery at SSKs level. - Loans sanctioned without ensuring the fulfilment of conditions such as permission/sanctions for implementation of the respective projects. - Disbursement of loans sanctioned were made without the units complying to the stipulated terms and conditions.	53	3.4.26 I II III	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past Board of Directors of Majalgaon SSK, B. Ambedkar SSK, Kranti SSK, Vikas SSK, Sanjivani SSK, Bhima SSK, Daund SSK, V. Shinde SSK.	418, 405, 421, 34, 109, 120B of IPC 13(1)(c) PC Act 405, 418, 34, 109, 120B of IPC 13 (1) (c) PC Act.
- The bank had extended credit facility to units against which action was initiated under SARFAESI Act. - Deficiencies pointed out in previous inspection report has not been rectified by the bank. - Fallacy in compliance submitted by the bank in case of Priyadarshani SSK. - Despite taking possession of the units, the bank had not initiated any action for the valuation of such unit.	71	3.8.8 ii iii vi viii	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past	405, 421, 418, 34, 109, 120B of IPC 13(1) (c) PC Act.
Excluding sizeable amount from balance sheet and adjusting accounts towards Principal amount, deteriorating recovery.	73	3.9.1 (a)	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past	420,34, 109, 120B of IPC 13(1) (c) PC Act.
Chart showing relationship between the BOD of MSCB and the Directors of the industries to whom unsecured loans have been granted.	130	7.3.1.2	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP	

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			and 2 belonged to Shivsena)) and several others in past. The Directors of Jai Ambika SSK, Dongrai SSK, Akola SSK, B. Deshmukh SSK, PDVV SSK	
Bank granted financial assistance to CSFs with negative net worth without Government Guarantee in total violation of the directions issued by Reserve Bank of India.	789	4	77 MSCB directors as mentioned below (57 belonged to NCP, 9 belonged to Congress (I), 1 belonged to BJP and 2 belonged to Shivsena)) and several others in past	405, 34, 109, 120B of IPC

29. The Inspection Report therefore not only points out the discrepancies or irregularities committed by the respondent Bank and its Directors but also point out that the trust reposed in the Bank and its officers has been brazenly breached. The report, prima-facie discloses that the bank records were forged and the profits were wrongly shown by abusing the Income Recognition and Asset Clarification (IRAC) Norms. The report, further discloses that the NPA Accounts were intentionally camouflaged, in as much as, the amount sanctioned and disbursed to the units wherein the Directors

were having interest were not shown in the periodical reports of the Bank with a view to safeguard the interest of the Directors. The report also discloses that the Directors either acting as a Board, Committee or Executive Committee were entrusted with the funds of the Banks, who in some cases have sanctioned illegal loans and in others, have sold out the properties at throw away prices contrary to the norms of NABARD and the RBI, as well as, the statutory provisions described under the SARFAESI Act.

30. The inspection report also discloses that, most of the Directors were having interest in the affairs of the Units to which loans were sanctioned. The details of the Directors, who were present in the meeting in which the loans were sanctioned and the relation with the persons to whom the loans were sanctioned are also disclosed in the report. Prima-facie, therefore the report

of the NABARD indicates that these Directors were having complete knowledge regarding the transaction and inspite of that, either they sanctioned the loan to such units and/or sold out the properties of such Units at a throw away price which resulted into a substantial loss to the Bank.

31. We have also perused the chargesheet filed under Section 88 of the M.C.S. Act by the authorised officer, (International Banking Division), Co-operative Societies, State of Maharashtra and charges framed.

32. The first charge says about irregularities committed in sanctioning the loan to the sugar factories, contrary to the parameters of Credit Monitoring Arrangement (CMA) of the NABARD causing loss to the extent of Rs.29,714.19 lakhs. At page 397 of the petition, the officer has charged thirty seven Directors of the Bank

(respondents herein) responsible for causing loss.

33. The second charge relates to disbursement of loan to the fourteen sugar factories by the Directors without adequate security and guarantee from the State causing loss in the sum of Rs.47,465.28 lakhs and has held thirty eight Directors of the Bank responsible for the same, particulars of which are at page-443 to 446 of the petition.

34. The third charge is about sanctioning of loans by the Directors to the four sugar factories without proper security. It further says that on account of inadequate and insufficient security, though the secured assets were sold, Bank has suffered a loss in the sum of Rs.20,348.92 lakhs for which the Directors and the Bank officers are held responsible; particulars of which are at page-463.

35. Charge four, relates to the sanctioning

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and disbursement of loan to four co-operative entities/societies in violation of the policy framed for sanctioning loan to the small-scale sectors. The charge further says that the Directors of the Bank sanctioned loan to four Co-operative Societies (page-467 of the petition) without proper securities which has caused loss in the sum of Rs.177.31 lakhs and for which the report says that about fifty-three officers/Directors are responsible.

36. Charge five, relates to gross irregularities committed by the Bank while selling the secured assets below the offset price in respect of six sugar factories causing a loss to the extent of Rs.8655.96 lakhs. The charge further amplifies, the loans were disbursed to these six sugar factories and soot girnis without securing its repayment and for which seventy-five persons, which includes the Directors and the officers, are

held responsible, particulars of which are at page-487 to 489.

37. The sixth charge says, the prevailing Board of Directors sold the secured assets of three sugar factories without following the procedure but by private negotiations which caused loss to the Bank to the extent of 1914.51 lakhs for which seventy two persons including the Members of the Board are held responsible; particulars of which are at page-499 to 502 of the paper-book.

38. The seventh charge says, the Members of Board sold the secured asset of Kisan starch, C.S. Deopur, Dhule at distress value causing loss to the extent of Rs.365 lakhs and as such held forty-three members of the Board responsible for the same, particulars of which are at pages-510 and 511.

39. The eighth charge says for non-observ

ance of certain regulations of Banking Regulations Act, the RBI imposed Rs.5,00,000/- fine, and for the same, seventy-five persons including the Members of the Board are held responsible, particulars of which are at page-514 to 516 of the paper-book.

40. Charge nine, says certain amount was advanced to Mahalaxmi Tours and Travels and Girikand Travels for arranging the study tours of the Board Members. However, the Board Members did not go for such study tour which caused loss to the Bank to the extent of Rs.7.30 lakhs.

41. The petitioner in his complaint to the EOW has summarised these charges at page-1401 of the petition.

42. It may be stated that, though these charges were framed in September, 2015 there is

nothing on record to indicate whether these charges are enquired into or not.

43. The complainant in his complaint in para-6 has given particulars of the total amount of loss caused to the Bank as extracted from the charge under Section 88 and also furnish the names of the Directors and the names of the Committee Members, who according to the petitioner are responsible for causing such huge loss to the respondent-Bank.

44. Before parting, we may usefully reproduce the pertinent observations of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh V/s. Shri. Ram Singh, reported in A.I.R. 2000 Supreme Court 870**. The Hon'ble Court emphasized that, corruption is a disease. Though it has pervaded our public and social life, yet, by strong legislative measures it can be controlled. The need of the hour is to enforce such measures

strictly by bringing to book the mighty, rich, influential and powerful. As the norm is "Be you ever so high the law is above you". In paras-7, 8, 9, 10 :-

"7. Corruption in a civilised society is a disease like cancer, which if not detected in time is sure to malignise the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence shaking of

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the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.

8. The menace of corruption was found to have enormously increased by first and second world war conditions. The corruption, at the initial stages, was considered confined to the bureaucracy who had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of Government surplus stores were required to be disposed of by the public servants. As consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them wide discretion with the result of luring them to the glittering shine of the wealth and property. In order to consolidate and amend the laws relating to prevention of

corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act No.49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, as understood in the common parlance but specifically defined in the Act."

9. The Act was intended to make effective provision for the prevention of bribe and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in *R.S. Nayak vs. A.R. Antulay* [1984 (2) SCC 183] held:

. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the Statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the Statute as a whole keeping in view what was the mischief when the Statute was enacted and to remove which the Legislature enacted the

Statute. The rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.

10. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and decided cases under it."

45. Thus, after perusing the chargesheet

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filed under Section 88 of the M.C.S. Act and the Inspection Report of the NABARD, in our view, for the reasons stated therein, as also, the report of inquiries/inspection constitutes credible information and/or material which, prima-facie, discloses the commission of cognizable offences punishable under the Indian Penal Code and other penal laws and therefore we direct the Economic Offences Wing, Mumbai to register the First Information Report within five (5) days from today. Thereafter, all steps in accordance with law be taken uninfluenced by the oral assertions of Shri. Paropkari.

(SANDEEP K. SHINDE, J.)**(S.C. DHARMADHIKARI, J.)**