IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1678 OF 2020

1. Bhalchandra Bhagwantrao Tandulwadikar
Age 83 years, occ. Retired
r/o near Bhagwati Devi Mandir
Plot No. 27, Renukul Bhagwati Colony
Near Jawahar Colony,
Aurangabad.

2. Mr. Namdeo Dadarao Kachkure
age 45 years, occ. Service
r/o Shendra (Kamangar)
Tq. & Dist. Aurangabad Applicants

Versus

1. The State of Maharashtra
Through Police Station
CIDCO, Aurangabad

2. Raisa Begum Mohammad Najim
age 61 years, occ. Business
r/o Badi Masjid, Najim Estate Building
City Chowk, Aurangabad Respondents

Mr. K.J. Suryawanshi, Advocate holding for Mr. L.H. Kawale, Advocate for the applicants.
Mr. G.O. Wattamwar, APP for respondent No. 1.
Mr. G.M. Gaikwad, Advocate holding for Mr. A.M. Karad, Advocate for respondent No.2.

WITH
CRIMINAL APPLICATION NO. 1846 OF 2020

Upendra S/o Gunwantrao Muley
Age 47 years, occ. Chartered Accountant
R/o “Daulat”, Mahajan Colony, N-4, CIDCO

Aurangabad
Tq. & Dist. Aurangabad   Applicants

Versus

1. The State of Maharashtra
   For CIDCO Police Station
   CIDCO, Aurangabad
   Tq. & Dist. Aurangabad.

2. The Police Inspector
   Economic Offences Wing
   Police Commissioner Office,
   Aurangabad.

3. Rasia Begum Mohammad Najim
   Age 61 years, occ. Business
   r/o Badi masjid, Najim Estate Building
   City Chowk, Aurangabad
   Tq. & Dist. Aurangabad   Respondents

Mr. A.S. Gandhi, Advocate for applicants.
Mr. G.O. Wattamwar, APP for respondent Nos. 1 and 2.
Mr. A.M. Kara with Mr. G.N. Kulkarni, Advocates for Respondent No. 3.

WITH
CRIMINAL WRIT PETITION NO. 405 OF 2020

Raisa Begam Wd/o Mohd. Nazim
age 65 years, occ. Household
r/o Near Badi Masjid, City Chowk
Aurangabad
Tq. & Dist. Aurangabad.   Petitioner

Versus

1. The State of Maharashtra
   Though its Chief Secretary
   Home Department,
   Mumbai.

2. Police Commissioner Office
Through its Commissioner
Mill Corner, Aurangabad.

3. City Chowk Police Station
Through its Police Inspector
City Chowk, Aurangabad. Respondents

Mr. A.P. Gaikwad, Advocate for the petitioner.
Mr. G.O. Wattamwar, APP for all respondents.

CORAM : T.V. Nalawade &
M.G. Sewlikar, JJ.

DATE : 2nd December, 2020.

JUDGMENT : (PER : M.G. Sewlikar, J.)

1. Rule. Rule made returnable forthwith.

2. By consent, heard both the sides for final disposal.

3. Both these criminal applications and criminal writ petition, though argued on different dates, are being disposed of by common order as they arise out of the same offence.

4. Facts leading to these proceedings are that informant is the wife of deceased Mohd. Nazim. Said Mohd. Nazim had a business

at Gulmandi, Aurangabad, named and styled as 'M/s Babuji Footwear'. Applicant in Criminal Application no. 1846/2020 (hereinafter referred to as 'applicant Upendra') is a Chartered Accountant. The deceased Mohd. Nazim got acquainted with applicant Upendra. Applicant Upendra suggested deceased Mohd. Nazim to expand his business and for that purpose, got plot No. 4462 at Gulmandi standing in the name of Mohd. Nazim and a house property at City Chowk bearing CTS No. 6009/1 and 2 standing in the name of the informant Raisa Begum, mortgaged and got a loan sanctioned in the name of the informant to the tune of Rs. 1,70,00,000/-. It was a cash credit loan. It is alleged by the informant that she never executed any mortgage deed in favour of any bank. She never visited any bank nor she made any signature. Since this cash credit loan was not repaid, the bank filed dispute in the Co-operative Court on 27.07.2018. The informant received a notice of attachment of property standing in her name and in the name of her husband. The husband of the informant suffered heart attack when he learnt that the property of the informant was mortgaged and he died soon thereafter. When the informant obtained the documents of cash credit from the concerned bank, she came to know that the loan was taken on 09.09.2005 by mortgaging her property and showing her husband Mohd. Nazim as a surety. According to the informant, she never made any signature on any promissory note. The agreement alleged to be executed by her in the bank does not bear her signature. It is further alleged by the informant that on 24.07.2005, cash credit loan was shown to have been taken in the name of M/s Nazim Estate, Proprietor Raisa Begum (Respondent No. 2) and Mohd. Nazim and, on the same date i.e. on 24.07.2005 loan of two crores was shown to have been taken in the name of M/s Babuji Footwear and, on the basis of promissory note, loan of Rs. 1,76,00,000/- was obtained on 09.09.2005. Applicant Upendra was having custody of the original sale-deed of the house. Applicant Upendra gave the sale-deed to the bank. The informant purchased this property on 15.09.2005 which means she could not have mortgaged this property on 24.06.2005. It is alleged that applicant Upendra joined hands with the officers of the bank and got the loan sanctioned in the name of the informant by mortgaging her property. Accordingly, First Information Report was lodged on 04.09.2020 on the basis of which, offence under Sections 406, 420, 467, 468, 469 and 470 read with Section 34 of the Indian Penal Code came to be registered.

5. Criminal Application No. 1678/2020 is filed by applicant No. 1 - the then Manager of the concerned bank who retired on 17.04.2017 and, applicant No. 2 – Loan Officer of the said bank. Criminal Writ Petition No. 405/2020 has been filed by the informant for registration of crime.

6. Heard Shri K.J. Suryawanshi, learned counsel holding for Shri L.H. Kawale, learned counsel for applicants and Shri G.M. Gaikwad, learned counsel holding for Shri A.M. Karad, learned counsel for respondent No. 2 in Criminal Application No. 1678/2020, Shri A.S. Gandhi, learned counsel for applicant and Shri A.M. Karad and Shri G.N. Kulkarni, learned counsel for respondent No. 3 in Criminal Application No. 1846/2020, learned counsel Shri A.P. Gaikwad, learned counsel for petitioner in Criminal Writ Petition no. 405/2020 and, Shri G.O. Wattamwar, learned APP for State in all the proceedings.

7. Learned counsel for the applicants submitted that the informant has admitted in legal proceedings that she had taken loan from the concerned bank and now, she cannot resile from her own statement made in those legal proceedings. It is further submitted

that the informant had filed Writ Petition No. 3490/2016 before this Court challenging the recovery certificate dated 12.02.2016. In the said petition, the informant was directed to deposit an amount of Rs. 5,00,00,000/- upto 26.03.2020 and on her failure to deposit said amount, the bank was given liberty to finalise the said property. This petition was withdrawn by the informant on 21.02.2020 with liberty to the bank to recover the loan amount.

8. Learned APP and learned counsel for respondents argued that the informant had filed Dispute No. 2/2012 before the Co-operative Court in which she had pleaded that she is a *pardah nashin* lady and her signatures were taken on blank papers and those blank papers were used for disbursement of cash credit loan of Rs. 1,70,00,000/-. They submitted that this is the consistent stand of the informant that infact no loan was sanctioned to her.

9. Perused the record placed along with the applications. In Dispute No. 2/2012, the informant has alleged that by mis-using signatures on blank papers, loan was shown to have been sanctioned to the tune of Rs. 1,70,00,000/-. It is further seen that the informant preferred Revision No. 52/2009 against the order dated

13.01.2006 in case bearing No. 1572/2005 passed by the Deputy Registrar, Co-operative Societies, Aurangabad, in which the informant has alleged that she was in need of money for development of her business and had applied to respondent No. 1 for loan in the category of cash credit and loan of Rs. 1,70,00,000/- was sanctioned. The informant preferred Revision No. 42/2009 against the notice dated 23.09.2009 published by the Sub-Recovery Officer, Adarsha Mahila Nagari Sahakari Bank Ltd., in which, also the informant has alleged that the informant was in need of money for development of her business and had applied for loan in the category of cash credit to the tune of Rs. 1,70,00,000/-. Considering the need, sufficient mortgage property and capacity of repayment of the informant, the respondent-Bank sanctioned cash credit of Rs.1,70,00,000/-. This clearly shows that the informant admits that she had taken cash credit loan of Rs. 1,70,00,000/-. It is also not in dispute that recovery certificate had been issued by the Deputy District Registrar, Co-operative Societies, for recovery of the loan amount. All these admissions on the part of the informant clearly indicate that she had raised the loan and for raising loan she had mortgaged the property. Therefore, the allegations in the First Information Report run counter to her own admissions in the revision petitions named above. On this backdrop, it would be an abuse of process of law if the applicants are made to face the trial. The case of the applicants is, therefore, covered by condition Nos. 1 and 3 laid down in the case of **State of Hariyana and others Vs. Ch. Bhajan Lal and others** reported in AIR 1992 SC 604. Having regard to this, we are inclined to allow the applications.

10. So for as Criminal Writ Petition No. 405/2020 is concerned, the purpose of petition is served as the First Information Report has been registered.

11. For the reasons discussed hereinabove, following order is passed :-

ORDER

Criminal Application No. 1678/2020

1. Application is allowed.
2. Relief is granted in terms of prayer clause 'B'.

Criminal Application No. 1846/2020

1. Application is allowed.
2. Relief is granted in terms of prayer clause 'A'

Criminal Writ Petition No. 405/2020

Writ petition stands disposed of.

12. Rule made absolute in above terms. ‘

(M. G. SEWLIKAR)
Judge

(T.V. NALAWADE)
Judge

dyb