

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1252 OF 2019

1. Shyamrao Narayan Sonar,
Age : 74 Years, Occ. Retired,
R/o. House No. 590, Galli No.10
Near Sushil Nala, Deopur,
Dhule
2. Narayan Namdeo Patil,
Age : 73 Years, Occ. Nil
R/o. Plot No. 1370, Dnyadeep Medicine
Market, Corner, Galli No.5, Bol,
Dhule

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Co-operative Department,
Mantryala Mumbai
2. The Co-operative Commissioner
and Registrar Co-operative Society
Pune
3. The additional Registrar,
Co-operative Society Maharashtra State,
Central building Pune
4. The Divisional Commissioner
Co-operative Society Pune
5. The deputy Registrar, Dhule
6. The Special Auditor,
Co-operative Society, Nashik
7. The Liquidator
Shri. Samarth Shakari Path Padi,
Dhule.

...RESPONDENTS

Advocate for the Petitioners : Mr. M.R. Wagh
A.P.P for Respondent-State : S.G. Sangle
Advocate for respondent No.6 : Mr. C.P. Chavan
Advocate for respondent No.7 : Mr. J.M. Wagh
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**CORAM : T.V. NALWADE &
M.G.SWELIKAR, JJ.**
DATE : 02-03-2020.

JUDGMENT (PER T.V. NALWADE,J) :-

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

2. No hearing was given to learned counsel for intervener though he has filed application for intervention.

3. In the present proceeding relief is claimed of direction of registration of the crime against the persons who were in management of the Co-operative Society and also the officials who were involved in illegality and irregularity and constitute Special Investigation Team (SIT) for making investigation of the matter on the basis of report given by Special Auditor Co-operative Society Nashik dated 25.04.2018.

4. Present petitioners are depositors of Shri. Samarth Sahakari Pathpedi Limited, Dhule. It appears that prior to year 2016 audit was done but by filing proceeding bearing Writ

Petition No. 1613/2014 stay was requested to the enquiry which was started under Section 88 of the Maharashtra Co-operative Society Act. It was submitted that in that matter stay was granted. However submission do not show that stay was granted in respect of the action proposed in the report submitted in the year 2018. Petitioners are claiming relief on the basis of report of special auditor submitted in the year 2018.

5. The Special Auditor has filed reply affidavit and there is also reply of the liquidator as the society was not able to discharge its liability and return the amount with it deposited, the society went into the liquidation. The submissions made and the report of the Auditor show that due to irregularity and illegal acts of the management, the society suffered huge losses. The illegalities were of the nature of giving loan when there was no sufficient security, giving money to other institutions as deposit when it is not permissible by law and giving loan to near relatives by the management. As per the report of the Auditor, the amount of more than Rs. 31 crore is due to the depositors. Soft loan was given by the Government to this society and Government is also dupped and that amount is

more than Rs. 3.2 crores.

6. Lame excuse is given for non registration of the crime that record was not supplied as per the provision of Section 18(1)(5b) of the Maharashtra Co-operative Societies Act. The investors are required run from pillar to post to get back their money and most of them are pensioners. The departments are shirking the responsibility by putting blame on others and even when written complaint was given to police on 26.10.2018 Police of Azad Nagar police station did not take action on that report. Prior to that, complaints were given to co-operative departments but co-operative department, Hon'ble Minister of co-operation, Commissioner of Co-operative and Registrar of the Co-operative Society but no action was taken even when there are aforesaid circumstances. Today, some record was shown to this Court which is to the effect that loan was given to some near relatives by the directors and those relatives are defaulter. In view of this circumstances and when there is sufficient material to make out the case of misappropriation of the money of the depositors, this Court holds that direction needs to be given to register the crime and make the investigation of the matter. In view of the policy decision of the State Government and extent of amount involved in the matter the

investigation needs to be made by Economic Wing. In the result, following order :-

ORDER

- I. Petition is allowed.
- II. Respondent Azad Nagar Police Station, Dhule is hereby directed to register the crime on the basis of complaint given on 26.10.2018 by Narayan Namdeo Patil. If Narayan Namdeo Patil is not coming forward the complaint/ report can be accepted from any other depositors including Shamrao Narayan Thorat or other depositors. There is liberty to other depositors to come forward and give statements.
- III. Fortunately, Auditor is ready and he is present in the Court and so crime can be register on the basis of report of Auditor and for that no approval of higher authority is necessary.
- IV. Rule made absolute in those terms.
- V. All the applications are disposed off.

(M.G.SWELIKAR)
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/