IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.580 OF 2020

APPLICANT :- Ashok Shamrao Kale
Orig. Accused Aged about 69 years,
Occupation: Ex-Managing Director
of the Vidarbha Cooperative
Marketing Society Limited,
Office at Ganesh Peth, Near Bus Stand
Nagpur

...VERSUS...

Non-applicant :- Sunil Amrutrao Khadse
Aged about 56 years,
R/o: Mudholkar Peth, Amravati
Tah. & Distt. Amravati.
(Original Complainant)

Shri. S.S. Ghate, Advocate for applicant.
Shri. P.S. Patil, Advocate for Respondent.

CORAM : MANISH PITALE, J.

RESERVED ON : 20.07.2021.

PRONOUNCED ON : 27.07.2021.

J U D G M E N T

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. In the present case, 20 years have gone by and the

matter is still at the stage of issuance of process against the applicant who is the original accused. The Court of Chief Judicial Magistrate Amravati has issued process against the applicant for the offences punishable under Sections 406, 418, 420, 425 and 477-A of the Indian Penal Code (I.P.C.).

3. The applicant claims that the complaint ought to have been dismissed as no ingredients of the aforesaid offences are made out, apart from the fact that the complaint filed by the respondent is nothing but a counter blast, because the respondent was dismissed from service of Vidarbha Cooperative Marketing Society Limited, of which the applicant was Managing Director at the relevant time.

4. The facts in the present case have a chequered history. On 15.12.1997, the respondent submitted an application before the Commissioner (Cooperation), stating that there was large scale corruption in the affairs of the aforesaid Society and that the applicant alongwith others was involved in such misdeeds. The respondent also approached the Divisional Joint Registrar of Cooperative Societies with the said grievance. On 07.12.1998, the respondent, who was then working as a Plant Engineer in a

factory of the Society at Amravati, was issued a charge-sheet alleging misconduct on his part. In pursuance of the complaint lodged by the respondent, the Divisional Joint Registrar had caused an inquiry to be conducted by a Special Auditor into the affairs of the Society. On 13.06.2000, the Special Auditor forwarded a report to the Divisional Joint Registrar pursuant to the inquiry into the affairs of the Society. On 09.10.2000, the Divisional Joint Registrar sent a letter to the respondent referring to the said inquiry and stated the findings rendered in the report in respect of the nine issues raised by the respondent. The Divisional Joint Registrar did not forward copy of the report but informed the respondent that the Special Auditor found substance in three out of nine issues raised by the respondent. On 13.10.2000, the respondent caused a legal notice to be issued to the office bearers of the said Society, demanding that appropriate action be taken in the matter, failing which he would be constrained to initiate criminal proceedings in the matter.

5. Thereafter, the respondent approached the police for lodging of First Information Report in respect of the aforesaid allegations. Since no steps were taken by the police in that regard, on 14.02.2001, the respondent filed a private complaint

under Section 200 of the Code of Criminal Procedure (Cr.P.C.) before the Judicial Magistrate First Class, Amravati. In this complaint the respondent stated in detail as regards the alleged corruption in the affairs of the said Society, indicating that the applicant was also responsible for the same. The respondent prayed for registration of offences and consequent action to be taken against the accused persons for the offences punishable under Sections 406, 409, 418, 420, 425 and 477-A of the Indian Penal Code.

6. On 30.07.2001, the respondent was dismissed from service in pursuance of the aforesaid charge-sheet and domestic inquiry held against him. On 30.07.2001 itself, the Magistrate rejected the complaint filed by the respondent. Aggrieved by the same, the respondent approached the Sessions Court. The Revision application was partly allowed and the matter was remitted to the Magistrate for fresh consideration.

7. On 18.09.2012, the Judicial Magistrate First Class, once again considered the said complaint and dismissed the same, holding that the said complaint did not deserve to proceed further. The respondent challenged the said order by filing a revision

application before the Sessions Court at Amravati. By judgment and order dated 02.02.2015, the Court of Additional Sessions Judge, Amravati, allowed the revision application and set aside the order dated 18.09.2012 passed by the Magistrate. The aforesaid Court directed the Magistrate to give an opportunity to the respondent to adduce evidence and to decide the complaint afresh for issuance of process.

8. The applicant filed Revision Application No.63/2015, before this Court challenging the said judgment and order of the Additional Sessions Judge, Amravati. But, during pendency of such challenge, on 13.10.2015, the Court of Chief Judicial Magistrate, Amravati, heard the respondent and after considering the evidence and material on record, issued process against the applicant for the offences punishable under Sections 406, 418, 420, 425 and 477A of the IPC.

9. Thereafter on 31.07.2018, when the aforesaid Revision Application No.63/2015 came up for hearing before this Court, upon finding that the Magistrate had already issued process by order dated 13.10.2015, this Court disposed of the revision application, granting liberty to the applicant to challenge the order

of issuance of process. The proceedings before the Magistrate were stayed for a period of two weeks, in order to enable the applicant to take appropriate steps in the matter. The applicant filed revision application before the Sessions Court challenging the order of the Magistrate dated 13.10.2015, whereby process was issued. By the impugned order dated 24.02.2020, the Sessions Court dismissed the revision application filed by the applicant and thereby confirmed the order dated 13.10.2015, issuing process against the applicant.

10. The said orders passed by the Magistrate and the Sessions Court are subject matter of challenge in the present application. On 26.10.2020, this Court issued notice in the present application and granted interim stay of further proceedings pending before the Judicial Magistrate First Class, Amravati. While issuing notice, this Court recorded specific contention of the learned counsel appearing for the applicant that under proviso to Section 81(5B) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the "Act of 1960"), no First Information Report could have been registered except at the instance of an Auditor empowered to do so. The respondent filed reply affidavit and after the pleadings were completed, the

present application was heard finally.

11. Shri S.S. Ghate, learned counsel appearing for the applicant initially made submission on the basis of proviso to Section 81(5B) of the Act of 1960. The proviso specifically states that if the auditor finds in the audit report that any person is guilty of an offence relating to the accounts or any other offences he shall file a specific report to the Registrar and after obtaining written permission of the Registrar, file a First Information Report pertaining to such offence. It is further provided that if the auditor fails to initiate action in the matter, the Registrar shall cause the First Information Report to be registered. But, when the learned counsel appearing for the respondent brought to the notice of this Court that the provisos to Section 81(5B) of the Act of 1960, were added by way of amendment in the year 2013, with effect from 14.02.2013, since the present case concerns grievance raised prior to 2013, the learned counsel appearing for the applicant gave up the said argument.

12. Learned counsel for the applicant then submitted that in the present case, the respondent had initially approached the Commissioner (Cooperation) on 15.12.1997 under Section 83 of

the Act of 1960. It was submitted that under the said provision, as it stood at the relevant time, the Registrar could initiate an inquiry either on his own motion or on an application of 1/3rd members of the Society. It was submitted that in the present case, admittedly, the application for initiation of inquiry was not moved by 1/3rd members of the Society and it was only the respondent who had submitted such an application. Learned counsel submitted that such an application could not be said to be the basis for initiation of an inquiry by Registrar on his own or *suo motu* and that therefore, the very initiation of inquiry by directing the Special Auditor to inquire into the affairs of the Society, was unsustainable and stillborn. Reliance was placed on judgment of this Court in the case of *Mr. Shekhar Ramchandrarao Dhote and others Vs. State of Maharashtra and others (J*udgment and order dated 07.09.2018 passed in Writ Petition No.6932/2015), wherein it has been held that *suo motu* powers can be exercised by the Registrar under Section 83 of the Act of 1960, only after giving a notice to the persons likely to be affected that such *suo motu* powers were being exercised.

13. It was further submitted that the private complaint filed under Section 200 of the Cr.P.C. was on the basis of the

inquiry report submitted by the Special Auditor and that if the inquiry report itself could not be looked into, the Magistrate could not have considered the material based on the inquiry report for issuance of process against the applicant. It was further submitted that Section 148 of the Act of 1960, specifically provides that no prosecution could be initiated without previous sanction of the Registrar. In the present case, admittedly there was no sanction obtained from the Registrar and therefore, the Magistrate could have not issued process against the applicant. The learned counsel for the applicant relied upon the judgment and order dated 03.12.2020 passed by the this Court in Criminal Application (APL) No.585/2017 *Mahadeorao Uttamrao Rajurkar and another Vs. State of Maharashtra and others.* It was also submitted that when the Magistrate had initially twice refused to issue process, the order issuing process dated 13.10.2015, was wholly unsustainable for the reasons stated above. It was also submitted that the respondent was a disgruntled dismissed employee of the Society and the complaint was filed as a counterblast. The Sessions Court in the impugned order failed to appreciate these aspects of the matter while dismissing the Revision Application filed by the applicant.

14. On the other hand, Shri P. S. Patil, learned counsel appearing for the respondent submitted that in the present case, the respondent had been running from pillar to post to bring to light instances of corruption in the aforesaid Society, for which the applicant was responsible alongwith others. When the Registrar failed to take any precipitate action, despite availability of material in the form of the audit report showing instances of corruption in the affairs of the Society, the respondent was well within his rights to file the private complaint under Section 200 of the Cr.P.C. It was submitted that as per settled law any person could trigger the criminal justice system to bring the accused to justice. On the question of inquiry under Section 83 being non-est and consequently the audit report being unworthy of consideration, it was submitted that in the first place the said process of inquiry initiated by the Divisional Joint Registrar through the Special Auditor, was never made subject matter of challenge before any forum and secondly, it was submitted that the respondent had not only relied upon the report of the Special Auditor, but he had placed on record pleadings and materials before the Magistrate for issuance of process against the applicant.

15. On this basis, learned counsel for the respondent

submitted that when the Magistrate was satisfied that the ingredients of the aforesaid offences were found against the applicant on the basis of material placed on record, order issuing process was wholly justified and it could not be interfered with. It was further submitted that if the Registrar failed to take appropriate action in the matter, a complainant like the respondent could not be left high and dry. It was further submitted that when incriminating material was placed before the Magistrate, the order issuing process had to follow in the interest of justice.

16. Learned counsel for the respondent distinguished the aforesaid judgment passed in the case of *Mahadeorao Uttamrao Rajurkar and another Vs. State of Maharashtra and others* (supra) by pointing out that the Division Bench of this Court in the said case was concerned with the provisos added to Section 81(5B) of the Act of 1960, pursuant to amendment introduced in the year 2013. Since the present case concerns the pre-amendment scenario, the said judgment was wholly inapplicable. In so far as the judgment of this Court in the case of Mr. *Shekhar Ramchandrarao Dhote and others Vs. State of Maharashtra and others* (supra) is concerned, it was brought to the notice of this

Court that in the said case the petitioners had questioned notices issued by the Divisional Joint Registrar and the very initiation of inquiry under Section 83 of the Act of 1960 was questioned. Such were not the facts in the present case. On the aspect of Section 148 of the Act of 1960, it was highlighted that under the said provision no prosecution under the Act of 1960, can be lodged without previous sanction of the Registrar. But, in the present case, the respondent was seeking initiation of criminal proceeding against the applicant for offences under the Indian Penal Code on the basis of material brought before the Magistrate. It was pointed out that specific offences are enumerated in Section 146 of the Act of 1960, for which punishments are specifically provided in Section 147 thereof. A perusal of the punishments so provided show that the sentences range from a term of six months to three years. But, in the present case the respondent had specifically alleged offences under the Indian Penal Code that carry sentences beyond the term of three years. On this basis, it was submitted that present application deserved to be dismissed.

17. Heard learned counsel for the rival parties and perused the material on record. As noted above, the contention on the basis of which notice was issued by this Court and interim

relief was granted on 21.10.2020, was given up on behalf of the applicant. This was on the basis of the admitted position that provisos to Section 81(5B) of the Act of 1960, did not apply in the facts of the present case because they were added by way of amendment in the year 2013, while complaint in the present case was lodged way back on 14.02.2001.

18. Therefore, this Court is called upon to consider other contentions raised on behalf of the applicant and response given thereto on behalf of the respondent. The contention pertaining to Section 83 of the Act of 1960, is based on the position of law that where an authority has the power to proceed to initiate an inquiry either *suo motu* or on satisfaction of a specific contingency, when the authority initiates the inquiry by exercising *suo-motu* powers, the affected party is to be put to notice that such *suo-motu* powers are being exercised. In the present case, the respondent approached the Commissioner (Cooperation) as well as Divisional Joint Registrar with the grievance that there was large scale corruption in the affairs of the said Society and that the applicant was responsible for the same. It appears that the Divisional Joint Registrar directed the Special Auditor to conduct an audit into the financial affairs of the Society and to submit a report. In the

report, the Special Auditor did find substance in some of the allegations. Although a copy of report was not furnished to the respondent, the Divisional Joint Registrar sent communication dated 09.10.2000, to the respondent intimating that there was substance in three out of the nine allegations made by the respondent. When the Divisional Joint Registrar failed to take any action in the matter, the respondent sent a legal notice through his advocate to the office bearers of the Society to take appropriate action in the matter, failing which the respondent would be constrained to initiate criminal proceedings.

19. Thereafter, on 14.02.2001, the respondent filed the aforesaid complaint under Section 200 of the Cr.P.C. before the Judicial Magistrate First Class, Amravati. In the said complaint, the respondent elaborated upon the instances of alleged corruption in the functioning of the said Society. A perusal of the same shows that the allegations made by the respondent are not just based on the report of the Special Auditor and it is not as if the inquiry report is the sheet anchor of the complaint. In fact, the respondent has given details regarding alleged corruption in the affairs in the Society on various issues along with material available with him, including a list of witnesses in support of the

allegations levelled in the complaint. There is material on record to indicate that the respondent was dissatisfied with the report of the Special Auditor and that he had alleged that the auditor had shielded the persons responsible for the alleged corruption in the Society, including the applicant. Therefore, it becomes evident that the complaint filed on 14.02.2001 under section 200 of Cr.P.C. consists of allegations alongwith supporting material placed before the Magistrate claiming that the applicant was liable to be proceeded against under Sections 406, 409, 418, 420, 425 and 477-A of the Indian Penal Code alongwith provisions of the Prevention of Corruption Act. The Magistrate applied his mind and found that there was sufficient material on record to issue process against the applicant.

20. It is in this backdrop, that the contention raised on behalf of the applicant under Section 83 of the Cr.P.C. needs to be considered. There is no dispute about the fact that the direction of the Divisional Joint Registrar initiating inquiry through the Special Auditor was not made subject matter of challenge. The inquiry report submitted by the Special Auditor was also never challenged before any forum. The Registrar did not take any action against the applicant or any other person of the aforesaid

Society on the basis of the report of the Special Auditor. The auditor also did not take any further action in the matter. In such a situation, the respondent filed the complaint on 14.02.2001, under Section 200 of the Cr.P.C. As noted above, the complaint makes allegations against the applicant regarding large scale corruption in the said Society and such allegations go beyond the contents of the inquiry report submitted by the Special Auditor. Therefore, the applicant cannot succeed in his attempt to nip in the bud the criminal proceedings initiated at the behest of the respondent, by claiming that the initiation of inquiry under Section 83 of the Act of 1960, itself was stillborn. In the facts and circumstances of the present case, the applicant is not entitled to rely on the position of law laid down by this Court in the case of *Shekhar Ramchandrarao Dhote and others vs. State of Maharashtra and others* (supra). The judgment of Division Bench of this Court in the case of *Mahadeorao Uttamrao Rajurkar and another vs. State of Maharashtra and others* is wholly inapplicable because it concerns a situation post 2013 amendment whereby provisos to Section 81(5B) of the Act, 1960, were introduced. Hence, there is no substance in the aforesaid contentions raised on behalf of the applicant.

21. Insofar as the contention raised in the context of Section 148 of the Act, 1960 is concerned, suffice it to say that the very language of the aforesaid provision specifies that no prosecution under the Act of 1960, can be lodged except with the previous sanction of the Registrar. Since offences under the said Act are specified under Section 146, it is obvious that a sanction order of the Registrar would be required when prosecution is sought to be initiated for offences enumerated in Section 146 of the Act of 1960. In the present case, it was not the endeavour of the respondent to initiate prosecution for offences specified under Section 146 of the Act of 1960. Instead, the respondent all along claimed that the applicant was liable to be prosecuted for offences under IPC for the alleged large scale corruption in the affairs of the said Society. Therefore, the aforesaid contention raised on behalf of the applicant cannot be accepted.

22. As regards the contention of the applicant that the complaint in the instant case was nothing but a counterblast by the respondent, as he was dismissed from service of the Society, suffice it to say that the Magistrate was required to examine as to whether there was any prima facie material in the complaint to show ingredients of the alleged offences. Once such material was

found, the Magistrate could not be held to have committed an error in proceeding with the matter, only because the complainant happened to be a dismissed employee of the Society. Even otherwise, as per settled law, any person including the respondent, could set into motion the criminal proceedings, by placing on record relevant material. Hence, there is no substance in the said contention raised on behalf of the applicant.

23. In this backdrop, when the complaint dated 14.02.2001 is perused and the orders passed by the Magistrate issuing process and the Sessions Court dismissing the revision application are also perused, this Court finds that the applicant has failed to make out a case for interference in the impugned orders.

24. The Magistrate has applied his mind to the contents of the complaint, as also material placed on record on behalf of the respondent to come to a considered conclusion that process needs to be issued against the applicant. The argument raised on behalf of the applicant that the Magistrate on two earlier occasions had refused to issue process, can be of no consequence because the said orders refusing to issue process never attained finality. In the

first instance, the matter was remanded to the Magistrate and in the second instance, the order refusing to issue process was set aside by the Sessions Court with a direction to the Magistrate to provide an opportunity to the respondent to place on record material/evidence for issuance of process.

25. Hence, viewed from any angle the contentions raised on behalf of the applicant do not deserve favourable consideration. This Court finds that the impugned orders do not deserve any interference. Accordingly, the present application is dismissed.

JUDGE

MANISHA