

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 995 OF 2019

Ushabai Omprakash Jain,

..VS..

The State of Maharashtra, Through Police Station Officer, Police Station, Digras, Tq – Digras,
Dist – Yavatmal and Ors.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Irfan M. Ghongade, Advocate for the petitioner.
Ms H. N. Jaipurkar, A.P.P. for the respondents.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 25th January, 2021

Heard learned counsel for the petitioner and
learned A.P.P. for the respondents.

2. The petitioner is an investor who had invested a sum of Rs.4,78,000/- in the years 2015 and 2016, in the Credit Society of which, the accused persons, named in the written complaint filed by the petitioner were the office bearers. This fixed deposit was for a period of certain time and upon expiry of the time, the petitioner demanded back the amount so invested by her. It is her allegation that the office bearers of the Credit Society refused to return the deposit and not only that, they also refused to return deposit of other investors. The petitioner also alleged that the amount so deposited by her and also the other depositors was misappropriated by the respondents. The petitioner submits that she has

made a complaint also to the Registrar Co-operative Societies, who then directed an inquiry into the matter under Section 83 of the Maharashtra Co-operative Societies Act. The Enquiry Officer conducted inquiry and submitted his report to the effect that the deposits collected by the Credit Society, were later on disbursed as loans to various parties without following any rules and in illegal manner and therefore, there were huge defaults committed by those borrowers, as a result of which, the sums invested with the co-operative society by various depositors could not be returned to them. The inquiry report fixed the responsibility on each of the office bearers and recommended that the action in accordance with law be taken against those office bearers. Later on, a complaint on similar lines was filed by the petitioner and as police did not take any action, the petitioner initiated criminal proceedings before the Judicial Magistrate, First Class, Digra for issuing appropriate directions in the matter. The learned Magistrate, on 11.04.2018, directed the Police Officer of the Digra Police Station to register offences against the accused persons by exercising his power under Section 156(3) of the Code of Criminal Procedure (for short the "Cr.P.C."). The learned Magistrate further directed him to submit his final report within two months.

3. On the basis of such directions issued under Section 156(3) of the Cr.P.C., the offences punishable under Sections 418, 420, 468, 471 and 120 read with Section 34 of the Indian Penal Code were registered at Police Station, Digra against the office bearers of the

Credit Society. Further investigation was carried out, but no charge-sheet has been filed as this Court had, on 15.11.2019 directed the Investigating Officer not to file the charge-sheet without seeking leave of this Court. The reply filed by the respondents shows that presently the investigation is going on.

4. It is the contention of the learned counsel for the petitioner that whatever investigation is being done in the matter it is not appropriate and it is being done in biased manner so as to favour the accused persons. He further submits that current Investigating Officer is acting in a biased manner by not properly carrying out the investigation, inasmuch as the First Information Report registered against the accused persons is incomplete. He also submits that the Investigating Officer is acting under political pressure and therefore, he is seeking to take strengthen action against the accused persons.

5. Learned A.P.P. submits that proper investigation is being carried out and that the allegations made against the Investigating Officer by the petitioner are vague in nature, without being supported by any material produced on record by the petitioner and need to be ignored by this Court.

6. The first prayer in this petition is about issuance of direction to the respondent No.1 i.e. Police Station, Digra to register complete First Information Report and in this very prayer, another direction has been sought for handing over the investigation to C.B.

C.I.D. The first prayer clause, for the sake of understanding, is reproduced as under :-

“A) By issuing a writ of mandamus, or any other appropriate writ, order or direction in the like nature, it be directed to the respondent No.1 to registered the complete First Information Report/complaint of petitioner dated 07/02/2018 in Crime No.183/2018 and direct the respondent No.1 (Investigating Agency) to handover the investigation to CB CID or any other higher investigation agency;”

7. When this Court asked as to what is meant by the petitioner when he says that the F.I.R. registered in the matter is incomplete and respondent No.1 needs to be directed to register the complete First Information Report, learned counsel for the petitioner submitted that the written copy of the complaint given to Police Station, Digra has not been treated as First Information Report and its gist has been treated to be so, which is seen from the copy of the printed First Information Report registered vide crime No.183 of 2018 Police Station, Digra against the accused persons. We must say that the contention is fallacious. It appears to us that the petitioner is unnecessarily influenced by registration of a crime in a printed format of the First Information Report, which would always contain a gist of the allegations made in the written complaint or oral report by the complainant. Since the printed F.I.R. is based upon the written complaint or oral report, and since the offences are required to be entered into the register, the printed

F.I.R. is prepared so as to show that the offences are duly registered against the accused persons. But, so far as the evidentiary value of this document is concerned, it is settled law that the printed F.I.R. would never be considered as the First Information Report and what would be treated as First Information Report would be the written complaint or the oral report submitted to the Police Station and which discloses the commission of a cognizable offence, it being the information given to the police station regarding commission of cognizable offence at the first available opportunity. There is no dispute about the fact that the petitioner has been given acknowledgment of receipt of the written complaint by the concerned Police Station. Therefore, the petitioner should not entertain any doubt about her written complaint being not treated as First Information Report in the eye of law. If this is so, we are of the view that the first part of the prayer-A regarding issuance of direction to register the complete First Information Report is already satisfied and to this extent, the purpose of this petition has been served.

8. As regards the second part of prayer-A, we find that there are no circumstances averred in the memo of petition or even in the pursis filed by the petitioner which would demonstrate that the investigation being carried out in the matter is one sided or biased or unfair. Even in the rejoinder filed by the petitioner to the reply of the respondent No.1, nothing has been pointed out from which one could reasonably infer that the investigation being carried out is biased or unfair. No

material has been produced by the petitioner on record of this case so as to point out that there was some action which ought not to have been taken by the Investigating Officer and there was something which ought to have been done by the Investigating Officer. In these circumstances, we have to say that no case has been made out by the petitioner for handing over of the investigation to the C.B./C.I.D. branch as desired by the petitioner. However, if the petitioner could come across any new material or circumstance which would reasonably support her contention that the investigation is not being made properly, the petitioner would be at liberty to approach this Court for seeking appropriate directions in the matter afresh.

9. At this juncture, learned counsel for the petitioner has invited our attention to the law laid down by the Supreme Court in the case of *Dharam Pal Vs. State of Haryana and others*, (2016) 4 SCC 160 and view taken by another Division Bench of this Court in the case of *Mr. Rajendra S/o Shamraoji Padole Vs. State of Maharashtra through Police Station Officer, Police Station Ajni, Nagpur and others.*, 2017 SCC OnLine Bom 7953 to support his contentions. In the case of *Dharam Pal* (supra), the Apex Court has held that Constitutional Court can direct further investigation or reinvestigation by some other Investigating Agency and the purpose is of fair investigation and fair trial, because fair trial would be difficult unless there is a fair investigation. There can be no dispute about the principle of law stated in the case of *Dharam Pal* (supra). But, as we have already

found that the petitioner has failed to demonstrate before us that the investigation carried out presently by the Investigating Officer is unfair or biased or one sided, with due respect we would say that the petitioner cannot successfully invoke the power of this Court to direct investigation to be carried out by another agency, at least for the present. We have already given liberty to the petitioner to once again approach this Court if she lays her hand on specific material justifying her contention. Similar is the view taken by the Division Bench of this Court in *Mr. Rajendra S/o Shamraoji Padole* (supra) and therefore, for the reasons already stated, at this stage, this Court would not come to assistance of the petitioner. With these observations, the petition stands **dismissed**, with liberty as aforesaid.

10. At this stage, learned counsel for the petitioner submits that the Investigating Officer be restrained from filling the charge-sheet in the matter, at least for six weeks, which was the interim direction issued by this Court earlier. The prayer is opposed by the learned A.P.P. on the ground that if the interim order passed by this Court earlier is extended, there would be further delay in filling of the charge-sheet, which may not be in the interest of the petitioner herself as the petitioner desires that the culprits be brought to book expeditiously. She also submits that if any fresh material requiring further investigation in the matter is discovered, there are sufficient powers available under Section 173 of the Cr.P.C. to carry out further investigation.

11. Considering the rival submissions, we are of view that continuation of the interim order, in the circumstances of this case, would only make delay in filing of the charge-sheet against the accused persons who are already on bail, as submitted by learned counsel for the petitioner and this may not be a good indicator from the view point of the need for securing the evidence so far collected by the police during the investigation. Besides, further investigation, if warranted in the circumstances of the case, can also be carried out under Section 173(8) of the Cr.P.C. Therefore, we are of view that the prayer of the petitioner cannot be granted as it would not cause any prejudice to the petitioner. Hence, it is rejected.

JUDGE

JUDGE