

Parli (V), District Beed for the offence punishable under Section 420, 467, 468, 471, 409, 406 read with section 34 of the Indian Penal Code and the consequent Charge Sheet No. 1 of 2022 dated 6 January 2022.

2. We have heard learned counsel for the applicant and learned APP.

3. The facts in the present application are peculiar, in as much, as, the applicant has filed an application under section 156(3) of the Criminal Procedure Code for registering an offence in respect of certain irregularities regarding the amount which was payable to the farmers against the sale of their agricultural produce, being diverted to the account of a different society of which the Co-accused Prakash @ Baban Vitthal Aapet (Accused No.1) is a Chairman. Mr. Prakash Aapet was working as Manager of the Society- Late Dnyanoba Nivrutti Phad Krushi Nivishta Sanstha Ltd. The allegation is that by misusing designated user ID and password, which was entrusted to the said Manager, he managed to divert the amount which was payable to the farmers. In pursuance of the directions issued by the learned Magistrate, F.I.R. bearing Crime No. 233 of 2021 came to

be registered and during investigation of the same, the applicant, co-accused Prakash @ Baban Vitthal Aapet and others have been charge-sheeted.

4. Learned counsel for the applicant submitted that the applicant, in his capacity as Member of the Board of Directors of the Society, was not expected and was unable to supervise the day to day working of the said society. It is submitted that the day to day working of the society was entrusted to the Manager Mr. Aapet (Accused No.1) who was given a User ID and Password. Accused No.1 alone, by misusing the said User ID and Password, had diverted the amount to different society. The learned counsel for the applicant pointed out that there is nothing in the charge sheet to show that the applicant has been personally benefited out of the amount of alleged defalcation which was to the tune of Rs.19 lakhs. Learned counsel for the applicant pointed out that the said amount is not shown to be received or transferred to the account of the present applicant and therefore, there is nothing in the charge sheet to show complicity of the applicant in the alleged offence.

5. The learned counsel has then referred to the enquiry conducted by the Cooperative authorities and the consequent report dated 15.09.2021 by which the Assistant Registrar of the Cooperative Society, in an enquiry under section 83 of the Maharashtra Cooperative Societies Act, 1960 (the said Act, for short) has exonerated the Members of the Board of Directors. It is submitted that Accused No.1 Mr. Aapet has filed an affidavit accepting the responsibility. It is pointed out that the report of enquiry under section 83 of the said Act has a statutory effect and would override the subsequent communication dated 17 December, 2021 issued by the Assistant Registrar of the Cooperative Societies in which the Assistant Registrar has claimed that as Members of the Board of Directors, the applicant would also be responsible for the alleged irregularities. Except these, there are no other contentions raised.

6. Learned APP submitted that during the course of investigation, the applicant is found to have complicity in the alleged defalcation. Even otherwise, in his capacity as Director of the

Society, the applicant cannot escape liability even assuming that the defalcation was made by the Manager Mr. Aapet.

7. We have carefully considered the rival contentions and the submissions made. We find that the applicant, in his capacity as Director of the Society, cannot *prima facie* escape liability of the alleged defalcation as it is the Members of the Board of Directors who will be responsible for the affairs of the said society. It is necessary to note that Mr. Aapet (Accused No.1) was only an employee and was working as Manager.

8. Perusal of the report dated 15 September 2021 shows that the Assistant Registrar has only relied upon two aspects. First is that the Chairman and the Members of the Board of Directors had stated that they were unable to look after the day to day working of the society and secondly, Accused No.1 Prakash Aapet has accepted the responsibility of the defalcation. However, in the subsequent communication dated 17 December 2021, even the Assistant Registrar has accepted that the Members of the Board of Directors of the Society cannot escape from the responsibility of the alleged defalcation. We also *prima facie* find that investigation of the matter

is independent of the enquiry under section 83 of the said Act and the material collected during the course of investigation will have to be examined and appreciated by the trial Court at the trial of the offence. We thus find that no case for quashing of the First Information Report is made out. In such circumstances, the criminal application stands rejected.

9. We make it clear that observation herein are only for the the limited purpose of deciding the prayer for quashing. The trial Court may not be influenced by the same during the trial.

BHARAT P. DESHPANDE, J.

C. V. BHADANG, J.

JPChavan