IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

970 CRIMINAL WRIT PETITION NO.1326 OF 2021
WITH APPLN/37/2022 IN WP/1326/2021

SONPETH NAGRI SAHAKARI BANK LTD., THROUGH ITS CHIEF EXECUTIVE OFFICER NANDKISHORPURUSHOTTAM GOUD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
...
Advocate for Petitioners : Mr. A.S. Bajaj
PP for Respondent/State : Mr. D.R. Kale
Advocate for intervenor : Mr. R.B. Dhaware
...

CORAM : V.K. JADHAV &
SANDIPKUMAR C. MORE, JJ.
DATED : 18/01/2022

PER COURT :

. Heard finally with the consent of parties at admission stage.

2. The petitioner bank has filed this writ petition for the following prayer :-

> "(B) Be pleased to issue Writ of Mandamus or direction of like nature to the Respondent No. 2 and 3 to investigate the crime, if any, by the Economic Offence Wing or any other Senior Police Officer, from Superintendent Office, Parbhani, more particularly only in reference of Gram Panchayat House No. 543 situated at Shelgaon in pursuance to the complaint dtd. 19.12.2018."

3. By order dated 9th December 2021 we have directed the

APP to take specific instructions and make appropriate submissions on certain points. In para 4 of the said order, we have made the following observations :-

> "4. We, thus, request the learned A.P.P. to take specific instructions in this behalf and make appropriate submissions on the next date on the point that despite the complaints filed by the petitioner-Bank on various dates right from the year 2018, why crime is not registered till date. Furthermore, even if the petitioner-Bank has submitted an application for withdrawal of the said complaints, it is for the concerned Police Station or the Police authorities to carry out the investigation in connection with the complaints filed by the petitioner-Bank, if cognizable offence is disclosed even against the office bearers of the petitioner-Bank and its staff members."

4. Learned Public Prosecutor Mr. Kale submits that the F.I.R. No. 9/2022 came to be registered at Sonpeth Police Station, District Parbhani for the offences under sections 409, 465, 467, 468, 471 r/w. 34 of Indian Penal Code (for short 'I.P.C.') against nine persons including the borrower Sayyad Pasha Sayyad Nazmoddin and also against borrower, guarantors, directors, advocate on the panel of the bank and others. The learned Public Prosecutor further submits that on

the basis of complaint filed by Bhaskar Digamber Dukre dated 15.1.2022 the said Crime No. 9/2022 came to be registered at Police Station Sonpeth, District Parbhani.

5. The learned counsel for petitioner submits that one Sayyad Pasha had taken loan of Rs.3,50,000/- from the petitioner bank on security of his property bearing No. 343 situated at village Shelgaon and accordingly, mortgage deed was registered on 15.2.2011. On the basis of said mortgage deed the petitioner bank approved loan and further the charge was also shown over the said property No. 343 in Gram Panchayat record. Further, the said borrower Sayyad Pasha had demanded additional loan of Rs.5,00,000/- and as such, the petitioner demanded additional property for mortgage and accordingly Sayyad Pasha executed the mortgage deed in respect of property No. 543 on 29.3.2015. The learned counsel submits that since the loan was not repaid by borrower Sayyad Pasha, the petitioner bank has started recovery proceeding against him. At that time, it has been revealed that said Sayyad Pasha has played fraud upon the bank. He had falsely shown wrong property number at the time of second mortgage deed. Upon enquiry it was revealed that there is no property No. 543 in the village and as such, fraudulent document was executed by Sayyad

Pasha. The learned counsel for petitioner submits that so far as the property No. 343 situated at village Shelgaon Gram Panchayat is concerned, there is no dispute about the existence of the said property.

6. The learned counsel for the petitioner submits that crime is not registered on the basis of complaint lodged by bank. The petitioner bank has approached police station way back in the year 2018 and even after repeated requests, no crime was registered. However, at present the crime came to be registered on 15.1.2020 on the basis of complaint lodged by said Bhaskar Dukre. The learned counsel for petitioner bank submits that the petitioner bank has also obtained recovery certificate under section 101 of the Maharashtra Co-operative Societies Act and due to the complaint filed by Bhaskar Dukre, crime is registered and the recovery process in respect of the said loan will be stalled for indefinite period. The learned counsel submits that even the property No. 343 is already auctioned in terms of those recovery proceedings.

7. We need to mention here that the said Bhaskar Digambar Dukre had filed intervention application bearing Criminal Application No. 37/2022 before us. According to him, the mortgage deed No. 384/2018 in respect of property No. 343 came to be registered on

30.3.2018 in the office of Deputy Registrar, Sonpeth. However, on 12.9.2017 Head Master Sayyad Pasha Sayyad Nizamoddin has sold the said property No. 343 to Shaikh Pasha Suleman on 12.9.2017. The intervenor Bhaskar Digambar Dukre has purchased the said property No. 343 under registered sale deed for valuable consideration in the year 2020 from Shaikh Pasha Suleman, resident of Sonpeth. It is his case that all the entries in the bank record about the said property No. 343 for extended loan are bogus. The intervenor Bhaskar Digambar Dukre claims to be bonafide purchaser is at present in possession of property No. 343.

8. We need to recollect here that even the petitioner bank has lodged the complaint way back in the year 2018. It appears from the papers annexed to the writ petition that Police Head Constable Shri. Ade, B.No.178 of Police Station Sonpeth has demanded various documents to the petitioner bank. That includes the loan demand application, salary certificate, promissory note, agreement letter, revival letter and also raised the various queries pertaining to the said property No. 543 and property No. 343. Consequently, the petitioner bank has submitted an application in the concerned police station for withdrawal of the said complaint. In view of the same in the order

dated 9th December, 2021 we have directed the learned APP to take specific instructions and make proper submissions.

9. In the facts of the present case, who is complainant is not important. In our considered opinion, important aspect of the matter is as to whether the cognizable offence is disclosed and if it is disclosed, it is for the investigating agency to carry out the investigation to find out the truth. If the petitioner bank is not happy with the registration of the F.I.R. on the basis of complaint lodged by Bhaskar Dukre, it is for the bank to avail appropriate legal remedies. However, we find no reason to keep this Criminal Writ Petition pending. Criminal Writ Petition is accordingly disposed of. Intervention Application also stands disposed of.

[SANDIPKUMAR C. MORE, J.] **[V.K. JADHAV, J.]**

ssc/