

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

CRIMINAL WRIT PETITION NO.860 OF 2018

- Petitioners** : 1. Sudhakar Ramkrishna Gangane,
Aged about 71 years, Occ. : Social Work,
R/o Yatra Chauk, Akot, Tah. Akot and Dist. Akola.
2. Punjabrao Tukaramji Shirsat,
Aged about 72 years, Occ. : Cultivator,
R/o Narsingh Road, Akot,
Tah. Akot and Dist. Akola.
3. Prabhakar Ramkrishna Gangane,
Aged about 74 years, Occ. Cultivator,
R/o. Yatra Chauk, Akot, Tah. Akot and Dist. Akola.
4. Bhimrao Bhaurao Wankhade,
Aged about 84 years, Occ. Cultivator,
R/o. Alewladi, Tah. Akot and Dist. Akola.
5. Pandharinath Harishchandra Siraskar,
Aged about 76 years, Occ. Cultivator,
R/o. Popatkhed Road, Akot,
Tah. Akot and Dist. Akola
6. Bhaurao Suryabhanji Ambalkar,
Aged about 72 years, Occ. Business,
R/o. Somwar Vesh, Akot,
Tah. Akot and Dist. Akola.
7. Bhaudeorao Pundalikrao Girhe,
Aged about (Died) years, Occ. Cultivator,
R/o. Hiwarkhed, Tah. Akot and Dist. Akola.
8. Shaligram Pundalikrao Awachar,
Aged about (Died) years, Occ. Cultivator,
R/o. Pathardi, Tah. Akot and Dist. Akola.
9. Mumtazbi Abdul Wahid Patel,
Aged about 60 years, Occ. Household,
R/o. Kawatha, Akot, Tah. Akot and Dist. Akola.
- Versus –

Respondents : 1. The State of Maharashtra,
through Police Station Officer,
Police Station, Akot, Tah. Akot, District Akola.
2. Shri Rameshwar Karale (Died),
R/o Wai, Tah. Akot, Dist. Akola.

Shri R.L. Khapre, Senior Advocate for the Petitioners.
Shri S.S. Doifode, A.P.P. for Respondent No.1.

CORAM: **SUNIL B. SHUKRE AND M.W. CHANDWANI, JJ.**
DATE : **21st NOVEMBER, 2022.**

ORAL JUDGMENT : *(Per Sunil B. Shukre, J.)*

Heard Shri R.L. Khapre, learned Senior Counsel for the petitioners and Shri S.S. Doifode, learned Additional Public Prosecutor for respondent No.1. Respondent No.2 was already dead when this petition was filed.

02] On going through “A” Summary Report, we do not find any such thing as would enable us to express our disagreement with the conclusion drawn therein by the Investigating Officer. Of course, the learned A.P.P. has submitted that no prejudice would be caused to the petitioners if the Investigating Officer is allowed to make further investigation as directed to him by the impugned order, we would like to differ with him. The reason is that it is an admitted fact that there is no special audit of the accounts of the Ginning Press for a continuous period of three years immediately preceding

the date on which the Government Appointed Administrator took over the charge of affairs of the Ginning Press. In these circumstances, no purpose would have been served by directing the Investigating Officer to carry out further investigation. In fact, when there is no special audit of the accounts for the relevant years, no conclusion can be drawn in any manner about the alleged irregularities having taken place and if so, the irregularities transcending into the field of crime. The foundation of such an enquiry is the inference drawn in this special audit about conducting of various monetary transactions of the Ginning Press with dishonest intention and causing of wrongful loss to the Ginning Press or causing a wrongful gain to somebody else and the material collected in support of such an inference. As pointed out by the learned Senior Counsel for the petitioners, in the present case, there were audits conducted in the past and also during the relevant period of time, but during those audits, nothing obvious pointing towards commission of any crime by any of the Directors or all of the Directors came to the fore. He also submits that it were the deceased complainant, who, during his tenure as an Administrator, came across certain handwritten entries in a diary, which in the opinion of the deceased complainant, were pointing towards some suspicious financial transactions possibly done by the Board of Directors under the Chairmanship of Shri Prabhakar Gangane. But, he also points out that

Shrikant Moundale, Technical Director had pointed out certain irregularities, but, they were not taken any cognizance of by the Registrar, who is the competent authority under Section 147 of the Maharashtra Co-operative Societies Act to file a criminal complaint. He also points out from the “A” Summary Report that whatever the irregularities pointed out in the regular audits, were rectified later on and the Special Auditor Shri V. R. Sawai had expressed his satisfaction over the same and that he has also categorically stated to the Investigating Officer that no defalcation or financial irregularities of criminal nature were committed by the Board of Directors comprising the petitioners at the relevant time. These facts, which are particularly stated in the “A” Summary Report, do show that there is no material available whatsoever on the basis of which any *prima facie* conclusion about commission of any criminal offence by the petitioners could be made out. They also show that no purpose would be served by directing the Investigating Officer to carryout further investigation, there being no special audit conducted for the relevant period.

03] For the reasons stated above, we are of the view that the impugned order is the result of non-application of mind to the material facts of the case and is, therefore, bad in law. It deserves to be quashed and set aside.

04] The impugned order is hereby quashed and set aside. The Court of Judicial Magistrate First Class, Akot is directed to reconsider "A" Summary Report in the light of the law and pass an appropriate order in accordance with law keeping in view the observations made herein above.

05] Rule is made absolute in the above terms.

(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

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