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

CRIMINAL APPLICATION (APL) NO.777 OF 2018
with
CRIMINAL APPLICATION (APL) NO.815 OF 2018

CRIMINAL APPLICATION (APL) NO.777 OF 2018

1. Ramesh @ Dadasaheb Khushalrao Deshpande,
Aged 72 years, Occ. – Lawyer,
R/o. Old City, Akola,
Tq. and District Akola

2. Shantanu Sharadchandra Joshi,
Aged 56 years, Occ. Business,
R/o. Near Lady Hospital, Akola,
Tq. and District Akola

3. Narendra Harihar Pathak,
Aged 71 years, Occ. Engineer & Builder,
R/o Jatharpeth, Akola,
Tq. and District Akola

4. Atul Bhailal Ganatra
Aged 61 years, Occ. Business,
R/o. Birla Colony, Akola
Tq. and District Akola

5. Sanjiv Radhavallabh Somani
Aged 48 years, Occ. Service,
R/o Near Akashwani, Akola,
Tq. and District Akola

6. Sau. Kasturi Rameshwar Fundkar
Adult, Occ. Household,
R/o. Kailash Nagar, Gorakshan Road,
Akola, Tq. and District Akola

7. Ramesh Balaji Deshpande,
Adult, Occ. Retired,
R/o. Flat No.3, Saras Apartment,
Ranpise Nagar, Akola
Tq. and District Akola

8. Vimalkumar Nathmal Goyanka,
Adult, Occ. Business,
R/o. Opposite Utsav Mangal
Karyalay, Jatharpeth, Akola,
Tq. and District Akola

9. Shrikant Suryakant Padgilwar,
Adult, Occ. Business,
R/o. Tapdiya Nagar, Akola,
Tq. and District Akola

10. Vijaykumar Ramkisan Panpalia,
Adult, Occ. Business,
R/o. Ramdaspeth, Akola,
Tq. and District Akola

11. Devkinandan Sukhdeo Patrodiya,
Adult, Occ. Farmer,
Near Labour Colony, Akola,
Tq. and District Akola

12. Sau. Rekhadevi Gopalji Khandelwal,
Adult, Occ. Housewife,
R/o. Alsi Plots, Akola,
Tq. and District Akola

13. Arun Laxman Kulkarni,
Adult, Occ. Retired,
Vijay Housing Colony,
Gorakshan Road, Akola,
Tq. and District Akola

14. Ghanshyam Bansilal Kakrania,
Adult, Occ. Business,
R/o. Rallies Plots, Amravati
Tq. and District Amravati

15. Vijay Ramchandraji Kabra,
Adult, Occ. Business,
R/o. Navi Peth, Jalgaon,
Tq. and District Jalgaon (Khandesh)

16. Nandalal Laxmanlal Sarvare,
Adult, Occ. Farmer,
R/o. Main Road, Balapur,
Tq. Balapur, District Akola

17. Dilip Ambadas Kasture,
Adult, Occ. Retired,
R/o.14, Vrundavan Nagar,
Nanded, Tq. and District Nanded

...APPLICANTS

VERSUS

1. State of Maharashtra,
Police Station Officer,
P.S. City Kotwali, Akola,
Tq. and Distrct Akola

2. Purushottam Trimbak Vyas,
Aged 65 years, Occ. – Retired,
R/o. Galli No.2, Gajanan Nagar,
Dabki Road, Akola,
Tq. and District Akola

...NON-APPLICANTS

Shri A.S. Mardikar, Senior Advocate assisted by Shri V.R. Deshpande, Advocate for the applicants.
Shri T.A. Mirza, Additional Public Prosecutor for non-applicant No.1/State.
Shri R.R. Vyas, Advocate for non-applicant No.2

WITH

CRIMINAL APPLICATION (APL) NO.815 OF 2018

Prakash Chandmal Bhandari
Aged about 56 years,
Occ. Chartered Accountant
P.C. Bhandari & Co.
Ramdaspeth, Akola,
Tq. and District Akola

...APPLICANT

VERSUS

1. State of Maharashtra,
Police Station Officer,
City Kotwali Police Station, Akola
Tq. and District Akola

2. Purushottam Trimbak Vyas
Aged about 65 years,
Occ. Retired,
R/o. Samartha Gajanan Nagar,
Dabki Road, Akola
Tq. and District Akola

...NON-APPLICANTS

Shri A.M. Ghare, Advocate for the applicant.
Shri T.A. Mirza, Additional Public Prosecutor for non-applicant No.1/State.
Shri R.R. Vyas, Advocate for non-applicant No.2

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
RESERVED ON : OCTOBER 20, 2022.
PRONOUNCED ON : DECEMBER 15, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The applicants by invoking jurisdiction under Article 226 and 227 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.' for short) seek quashment of the order passed by the Judicial Magistrate First Class, Akola directing the Police Station Officer/Authorized Officer of City Kotwali Police Station, Akola to register the First Information Report (hereinafter referred to as the 'FIR' for short) under Section 156(3) of the Cr.P.C. Applicant Nos.1 to 3, 12 and 14 are the Directors. Applicant Nos.4 to 11, 13, 15 to 17 are the Ex-Directors of the Akola Urban Co-operative Bank Limited, Akola (hereinafter referred to as 'the Co-operative Bank' for short). Applicant No.2 is the Secretary, Applicant No.3 is the Chairman, Applicant No.4 is the Ex-President and Applicant No.5 is the Ex-Staff Representative whereas the applicant in Criminal Application No.815 of 2018 is the Statutory Auditor of the Co-operative Bank. The non-applicant No.2 in both the applications is the shareholder and had filed a nomination for the post of Director, which was rejected.

3. As per the contentions of the applicants, on 31/07/2014, non-applicant No.2 filed an application before the Chief Judicial Magistrate under Section 156(3) of the Cr.P.C. alleging that all the applicants are the Directors and Office bearers and the applicant in

Criminal Application No.815 of 2018 is the Statutory Auditor. All the applicants by joining hands committed fraud of Rs.64 Crores in the Co-operative Bank, therefore, he approached the Police and filed a complaint to the Superintendent of Police on 22/12/2013, but no cognizance was taken. Therefore, he filed an application under Section 156(3) of the Cr.P.C. bearing M.C.A. No.1065/2014 which was initially rejected on 10/10/2014 on the ground that non-applicant No.2 had not filed any document to substantiate the allegations. The non-applicant No.2 being aggrieved with the order passed by the Judicial Magistrate First Class, Akola preferred Revision bearing No.175 of 2014 which was dismissed. The non-applicant No.2 had challenged the order of the Revisional Court in Criminal Writ Petition No.548 of 2015 which was partly allowed vide order dated 18/04/2016. This Court while remanding back the matter relied on the report of the Divisional Joint Registrar, Co-operative Society (Audit) Amravati Division, Amravati dated 09/06/2014. After remanding back the matter, the report of the Divisional Joint Registrar was placed on record. On the basis of which the Magistrate issued direction under Section 156(3) of the Cr.P.C. to register the First Information Report.

4. As per the contentions of the applicants, non-applicant No.2 had suppressed material facts before the learned Magistrate that initially

he had filed Regular Criminal Case No.471 of 2014 by making similar allegations before the Chief Judicial Magistrate, Akola. The Investigating Officer submitted a report that no incriminating material (evidence) is found against the applicants. Learned Magistrate after relying upon the said report directed further investigation under Section 173(8) of the Cr.P.C. The order passed by the learned Magistrate directing further investigation was set aside by the Revisional Court. The learned Chief Judicial Magistrate discharged the applicants under Section 245 of the Cr.P.C. as there was no ground to proceed. Thus, the non-applicant No.2 by suppressing material facts filed application under Section 156(3) of the Cr.P.C.

5. Being aggrieved with the order passed by the Judicial Magistrate, directing the registration of the FIR, present applications are filed to quash the said FIR. It is the contention of the applicants that the learned Magistrate had not considered that non-applicant No.2 had made vague allegations and, therefore, the learned Chief Judicial Magistrate already discharged the present applicants under Section 245 of the Cr.P.C. The learned Magistrate has also ignored the inquiry report, which specifically says that the illegalities and irregularities which were noted, are committed by the Staff behind the back of top Management. Thus, the learned Magistrate had ignored the said report

on which the non-applicant No.2 also relied upon and also ignored the fact that on the basis of said report, earlier applicants are discharged. There is no *prima facie* material against the present applicants to proceed against them. Continuing the prosecution against the present applicants is the abuse of process of law and, therefore, the FIR registered against the applicants deserves to be quashed.

6. In response to the notice of these applications, non-applicant No.1/State filed reply and denied the contentions of the applicants. As per the contention of non-applicant No.1/State, learned Judicial Magistrate First Class considered the audit report and the learned Judicial Magistrate First Class observed that M/s. P.G. Joshi and Company Chartered Accountants, Nagpur prepared the audit report. It is further observed by the learned Magistrate that the audit report reveals the serious irregularities and fraud committed by the Co-operative Bank at various levels and different accounts. The alleged fraud was committed with an intention for a long period of 14 years. In all 17 FIR's lodged by the Manager of the Co-operative Bank against the defaulters and some of the complaints have been registered against Mr. O.T. Rathi. Thus, there are ample material to show the involvement of the applicants in the alleged offence.

7. Non-applicant No.2 also resisted the applications on the ground that the learned Magistrate, Akola after going through 48 documents and after hearing the learned Counsel for the complainant found that there is a *prima facie* evidence and, therefore, allowed the application of the complainant and directed the Police Station Officer, City Kotwali to register the FIR against the applicants. There is a *prima facie* material against the present applicants and, therefore, the applications deserve to be dismissed.

8. Heard Shri A.S. Mardikar, learned Senior Counsel for the applicants in Criminal Application (APL) No.777/2018 and Shri A.M. Ghare, learned Counsel for the applicant in Criminal Application (APL) No.815/2018.

9. It is submitted by Shri Mardikar, learned Senior Counsel that the allegations made against the applicants are vague in nature. The application filed by non-applicant No.2 nowhere assigns any role to the present applicants in the alleged fraud. He further invited our attention towards the inquiry report and submitted that the inquiry report on the basis of which this Court remanded the matter back to the trial Court

specifically states that there was a well planned strategy to defraud the bank and continued for a long period of 14 years. Without knowledge of top management, statutory auditors and RBI Inspectors. The observation of the inquiry Committee specifically states that the alleged illegalities and irregularities are committed in the bank at various levels and in different accounts and it revealed that said irregularities and illegalities are committed by the staff members without the knowledge of top management statutory auditors and authorities. He further submitted that initially non-applicant No.2 filed a Regular Criminal Case No.471/2014 by making similar allegations. The Investigating Officer has submitted the report under Section 202 of the Cr.P.C. stating that no incriminating evidence found against the present applicants. Learned Magistrate directed further investigation under Section 173(8) of the Cr.P.C. Said order was challenged in the revision. Said revision was allowed and the order of further investigation was set aside. Said order of setting aside further investigation attained finality as it was not challenged by the non-applicant No.2. The learned Chief Judicial Magistrate discharged the applicants under Section 245 of the Cr.P.C. as there was no ground to proceed. By suppressing the earlier material facts that the applicants are discharged, present orders are obtained by non-applicant No.2. Thus, non-applicant No.2 with malafide intention filed the second application. He further submitted that even the allegations are taken as it is at the face value no offence is made out against the present applicants. The continuation of prosecution against the applicants without any material would be an abuse of process of law and, therefore, the FIR registered against the applicants deserves to be quashed.

10. Shri A.M. Ghare, learned Counsel endorsed the same contentions and in support he relied upon ***Mahendra P. Dholakia Vs. The State of Maharashtra and ors. (Criminal Writ Petition No.5073/2015 decided on 29/04/2021)*** wherein it is held that the complainant ought not to have suppressed filing and pendency of earlier complaint in second complaint. Magistrate ought not to have entertained second complaint filed by the complainant particularly because earlier complaint was pending. Earlier complaint was dismissed on merits and there are no exceptional circumstances in case to even consider whether second complaint could be entertained. All subsequent proceedings in pursuance of filing of second complaint cannot be sustained. He further relied on ***Kapil Agarwal and ors. Vs. Sanjay Sharma and ors (2021) 5 SCC 524*** wherein it is held that the private respondent has filed an application under Section 156(3) of the Cr.P.C. which is pending before

the learned Magistrate, the impugned FIR with the same allegations and averments would not be maintainable, and therefore, the FIR deserves to be quashed and set aside. It is further held that the aforesaid contentions cannot be accepted for the simple reason that Cr.P.C. permits such an eventuality of a complaint case and enquiry or trial by the Magistrate in a complaint case and an investigation by the police pursuant to the FIR. The subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 of the Cr.P.C.

11. On the other hand, Shri T.A. Mirza, learned Additional Public Prosecutor submitted that during the investigation sufficient material is collected and the enquiry report shows that there are material illegalities and irregularities committed while sanctioning the loan. The Chartered Accountant's report shows serious irregularities and fraud committed in the bank at various levels and in different accounts. It is further revealed during the inquiry that there was a well planned strategy to defraud the bank and continued for a long period of 14 years. There was no internal audit of the main branch since many years. It is further observed during the inquiry that the loans were granted without any authority illegally and with malafide intention and these advances were

given without following due process of sanction and only the then Manager has signed the same. Thus, the enquiry report is sufficient to show that the fraud was committed in the bank and being the Directors of the said bank present applicants are involved hence *prima facie* case is made out and no intervention is called for.

12. For non-applicant No.2 Shri R.R. Vyas, learned Counsel appeared as an Amicus Curie. He fairly admitted that audit report does not disclose offence against the applicants but the audit report shows that several illegalities and irregularities are committed while advancing the loan. Being the Directors of the said bank the applicants are responsible for fraud. *Prima facie* case is made out against the present applicants. From the audit report it further revealed that severe irregularities and fraud committed in the bank at various levels and in different accounts. The statutory auditor of the bank M/s. P.C. Bhandari and Company Chartered Accountants Akola had conducted the statutory audit and issued their final audit report. The audit report and the special report of M/s. P.C. Bhandari and Company shows there are six broad categories of the fraud namely; under bank reconciliation, under hidden accounts, overdraft in current accounts and illegalities and fraud committed at Nagpur Gandhi Bag Branch, Jaistambh Branch, Amravati and at establishment department etc. He submitted that the scope of

intervention by this Court is very limited. This Court cannot enter into the merits of the matter. This Court only can see whether there is a *prima facie* material or not. In the present case, *prima facie* material is on record on the basis of which directions of registering the FIR are given. The order passed by the Magistrate is legal and proper one. Hence, no interference is called for and the present applications deserve to be dismissed.

13. Heard the parties at length. The order of Judicial Magistrate First Class, Akola is questioned by the applicants under Section 482 of the Cr.P.C.

14. Before entering into the merits of the application we find it appropriate to reiterate the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of ***Lalita Kumari vs. Government of Uttar Pradesh and others (2014) 2 SCC 1***, wherein Hon'ble Apex Court observed that although Section 154 Cr.P.C. postulates the mandatory registration of FIRs on receipt of information as to all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and

inequitable to prosecute a medical professional only on the basis of the allegations in the complaint. In the context of offences relating to corruption, the Supreme Court has also expressed the need for a preliminary inquiry before proceeding against public servants. Thus, the law can be summarized as follows :

> *i) Registration of FIR is mandatory under Section 154 CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
>
> *ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
>
> *iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
>
> *iv) The police officer cannot avoid his duty of registering a FIR if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
>
> *v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
>
> *vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category*

> *of cases in which preliminary inquiry may be made are as under:*
>
> *a) Matrimonial disputes/family disputes*
> *b) Commercial offences*
> *c) Medical negligence cases*
> *d) Corruption cases*
> *e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*
>
> *The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.*
>
> *vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*
>
> *viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected therein.*

15. The law regarding the provisions of the 156(3) is discussed by the Hon'ble Apex Court in XYZ vs. State of Madhya Pradesh and others, decision in Criminal Appeal No.1184/2022, 2022 Live Law SC 676 and held that a Division Bench of this Court in the case of **Sakiri Vasu vs. State of U.P.**, reported in **(2008)2 SCC 409**, expounded upon

the Magistrate's powers under Section 156(3) of the Cr.P.C. The Hon'ble Apex Court noted :

> *"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.*
>
> *13. The same view was taken by this Court in Dilawar Singh v. State of Delhi (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.*
>
> *15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds*

that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?"

16. It is further held in the judgment referred supra that what is necessary is only that the information given to the Police must disclose a commission of cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the

information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

17. In the light of the abovesaid well settled legal position the facts of the present cases are to be ascertained. Non-applicant No.2 had filed written complaint in the Court of Judicial Magistrate First Class, Akola for seeking the direction to register the FIR under Section 156(3) of Cr.P.C. bearing M.C.A. No.1065/2014. It is not disputed that non-applicant No.2 is a shareholder of Co-operative Bank. Initially non-applicant No.2 had filed an application under Section 156(3) of

Cr.P.C. which was rejected by the Chief Judicial Magistrate, Akola observing that:

> *"….. On perusal of complaint it appears that there are allegations against all the non-applicants in respect of fraud and misrepresentation. However, the complainant has not specifically pleaded / mentioned the role of each of the non-applicants. The dispute pertains to Co-operative Society Act. The complainant in his application has given the examples of fraud. However, the complainant has not material as to how and in what matter and by whom the offence has be committed. The complainant is vague in nature. Therefore, I am not inclined to allow the application. In result I pass the following order.*
>
> *ORDER*
>
> *Application is rejected."*

18. It is also not disputed that the said order was challenged by non-applicant No.2 by preferring revision before the Additional Sessions Judge, Akola. Said revision resulted into the dismissal by observing that vague allegations are made by non-applicant No.2 against the applicants and, therefore, no case is made out to issue the directions. Hence, revision application is dismissed. Said order of revisional Court is challenged by non-applicant No.2 in Criminal Writ Petition No.548/2015. This Court while allowing the writ petition partly, observed that the learned Senior Counsel for the petitioner has pointed out the enquiry report given by the Divisional Joint Registrar,

Co-operative Societies (Audit), the findings that the applications for loan were assessed, proposed and sanctioned by the then General Manager/Chief Executive Officer, that the sanction of loan was not ratified by the Board of Directors and loans were granted without proper authority and without knowledge of Board of Directors and the sanction was not signed by Chairman or Vice-Chairman of the bank and was not ratified by the Board of Directors. It is further pointed out from the conclusions under the heading “Fraud under Bank Reconciliation” of the report that the entries in the account were engineered in such a manner that it was not possible even for the Auditors to detect the fraud and all this was at the level of officials of the bank and without knowledge of the Directors. The enquiry report submitted by the Divisional Joint Registrar Co-operative Societies and the relevant para of the same was reproduced in the order passed by this Court in Criminal Writ Petition No.548/2015.

19. It is further clarified by this Court that it is not clear as to whether the report submitted by the Divisional Joint Registrar, Co-operative Societies was on record before the learned Magistrate when he passed the impugned order and, therefore, the learned Magistrate was directed to reconsider the matter according to law and shall take into consideration all the material that is placed on record.

20. After receipt of the order passed in writ petition, the enquiry report was submitted before the Magistrate. Learned Magistrate had considered the same and observed that perusal of audit report shows that during course of enquiry M/s. P.G. Joshi and Company, Chartered Accountants Nagpur have been appointed on 14/02/2013 to conduct the concurrent audit of the main branch at Akola. The said company had completed the concurrent audit of the main branch Akola and issued the report. The Divisional Joint Registrar Co-operative Societies (Audit) Amravati Division, Amravati has scrutinized the investigation report, statutory audit report and special report of M/s. P.C. Bhandari and Company and come to the conclusion that the fraud reported in the Co-operative Bank is described in six broad categories. The heavy amount of fraud was committed by the Oficers of the bank. There was a well planned strategy to defraud the bank and continued for a long period of 14 years without knowledge of top management, statutory auditors and RBI Inspectors. The learned Magistrate has further observed that the above conclusion of the statutory authority is sufficient to show that the officers of the bank have committed fraud and issued the directions to register the FIR and investigate the crime as per procedure. It is pertinent to note that before filing the application bearing No.1065/2014, non-applicant No.2 had filed Regular Criminal Case No.471/2014 by making similar allegations before the Chief

Judicial Magistrate, Akola. The learned Magistrate has taken the cognizance of the said complaint and directed the investigation and asked the Investigating Officer to submit a report under Section 202 of the Cr.P.C. The Investigating Officer has submitted the report that no incriminating material found against the applicants. Learned Magistrate had directed the further investigation under Section 173(8) of Cr.P.C. Said order was challenged by the applicants in Criminal Revision bearing No.11/2017. Said revision was allowed and the order passed by the learned Magistrate of further investigation was set aside. Subsequently, learned Magistrate discharged the applicants under Section 245 of Cr.P.C. as there was no ground to proceed. It reveals from the order passed by the learned Magistrate that after considering the statement of the complainant, the allegations in the complaint, the judgment of the Additional Sessions Judge delivered on 10/06/2014 in Criminal Revision No.77/2014 the material brought on record by the complainant is not sufficient to arrive at a *prima facie* conclusion that any of the accused persons named in the complaint have committed any cognizable offence so as to proceed against any of them under Chapter XVI of the Cr.P.C. especially when in respect of the subject matter of this complaint, the City Kotwali police station has lodged the several criminal prosecution against concerned accused persons including the office bearers of the said bank and those proceedings are pending in this Court and any other courts. It is further observed that during the course of trial all those offences, if it would appear that any person not being the accused therein has committed any offence for which such persons could be tried together with the accused, the Court may proceed against such persons for the offence which he appears to have been committed within the meaning of/by virtue of the provisions of Section 319 of the Cr.P.C. As there is no justifiable ground against any of the accused persons named in the complaint and the accused persons, therefore, liable to be discharged.

21. Now question before this Court is whether the subsequent application filed by non-applicant No.2 against the applicants on the similar allegations made in the earlier complaint was maintainable in view of the fact that after due inquiry under Section 202 of the Cr.P.C. before the Magistrate the applicants are discharged.

22. In order to consider the said questions, it would be appropriate to first refer that non-applicant No.2 had suppressed these facts while filing subsequent application under Section 156(3) of the Cr.P.C. He has not only suppressed this fact from the Magistrate to whom he initially approached for seeking directions. He had also suppressed this fact while filing the writ petition before this Court.

23. Admittedly, initially Regular Criminal Case was filed, the statement of non-applicant No.2 was recorded, report of the Investigating Officer was called and it revealed from the report that no incriminating evidence came before the Investigating Officer, in spite of the said report the Magistrate had directed further investigation, the order of further investigation was set aside by the Additional Sessions Judge, Akola in the Revision Petition. In view of that order the Chief Judicial Magistrate had discharged the present applicants from the alleged offences. It would be appropriate to mention that in RCC No.471/2014 and the application filed for seeking directions to register the FIR bearing No.1065/2014 wherein similar allegations are made by non-applicant No.2. Admittedly, no specific role is assigned to any of the applicants. Considering the peculiar facts of the case and the well settled legal position of law as regards to maintainability of the second complaint on similar allegations is required to be seen. The Hon'ble Apex Court in the case of ***Pramatha Nath Talukdar and anr. Vs. Saroj Ranjan Sarkar AIR 1962 SC 876, T.T. Antony Vs. State of Kerala and ors. (2001) 6 SCC 181*** observed that a second complaint on similar allegations would be maintainable only in exceptional circumstances. It was specifically laid down that the test for such exceptional circumstances would be under three categories – (i) when the earlier

complaint stood disposed of firstly on the basis of a manifest error, (ii) when there was manifest miscarriage of justice in disposal of such complaint and (iii) when new facts which the complainant had no knowledge or could not with reasonable diligence have brought forward in the previous proceedings had come to left. In the case of *T.T. Antony Vs. State of Kerala and ors.* (supra) held that where subsequent FIR was filed on same set of allegations, it was held that if second or successive FIR were permitted and fresh investigation were undertaken it would amount to abuse of process of law. Admittedly, there is no provision in the Cr.P.C. or in any other statutes which debarred the complainant from preferring the second complaint on the same allegations. But at the same time, it is well settled that the second complaint on the same facts cannot be made unless there are exceptional circumstances. The second complaint would be permissible on the circumstances how the first complaint was dismissed, if the dismissal of the complaint was not on merits but on default of the complainant the second complaint would be maintainable.

24. The Hon'ble Apex Court in the case of ***V. Ravi Kumar Vs. State and ors. MANU/SC/1480/2018*** reiterated that if the first complaint was dismissed or disposed of for default the second complaint would certainly be maintainable. It is further clarified that if the earlier

complaint was disposed of on full consideration of the complaint on merits the second complaint would not be maintainable. The Hon'ble Apex Court in the case of ***Samta Naidu and anr. Vs. State of Madhya Pradesh and anr. (2020) 5 SCC 378*** took a note of earlier judgments and held that if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on "almost identical facts" which were raised in the first complaint would not be maintainable. Thus, the position of law is clear that the second complaint on the same allegations can be filed by the complainant and it could be entertained only in certain exceptional circumstances.

25. Applying the said position of law to the facts of the present case. In the present case earlier Regular Criminal Case was filed on 20/03/2014 and it was decided on 30/06/2014. The application bearing No.1065/2014 for seeking direction under Section 156(3) of Cr.P.C. is filed on 31/07/2014 i.e. after first criminal case was dismissed and the applicants are discharged on merits. Initial order of rejection was passed on 10/10/2014. It is pertinent to note that the allegations in the two complaints were identical and the core of the two complaints was similar. Earlier regular criminal case was disposed of after obtaining the report of the Investigating Officer and in view of interim order passed by the Revisional Court in Criminal Revision No.11/2017.

Subsequently, the revision was allowed and the order of further investigation was quashed and set aside. The applicants are discharged by the Chief Judicial Magistrate as there was no *prima facie* material against the present applicants. By observing that if during the trial any material appears before the Court against any of the applicants, the prosecution can by virtue of provisions of Section 319 of the Cr.P.C. add the present applicants as an accused.

26. Shri Vyas, learned Counsel who appearing as Amicus Curie vehemently submitted that the scope of Section 156(3) of Cr.P.C. is very wide. Exercise of that power is available even at post cognizance stage until trial commences i.e. charges are framed. This power can also be exercised *suo moto* by the Magistrate himself. There is no dispute regarding the legal position. Admittedly, the scope under Section 156(3) of Cr.P.C. is very wide. But it is also well settled that for invoking the power under Section 156(3) of Cr.P.C. there should be a *prima facie* material to issue the directions to register the FIR. In the present case, the facts show that *prima facie* material is not available even the allegations made by the non-applicant No.2 against the applicants are vague in nature. The similar allegations are considered initially and the complaint filed by the non-applicant No.2 was dismissed. On similar allegations, this second application for seeking

directions to register the FIR is filed. In view of directions of this Court, the learned Magistrate had issued the directions to register the FIR. The order passed by this Court in writ petition specifically states that considering the nature of accusations made by the petitioner and the material which is placed on record, it is necessary that the learned Magistrate should apply his mind to all the relevant aspects. It is further clarified that the report submitted by the statutory authority dealing with the issues raised by the petitioner, it will have to be considered by the Magistrate specifically. The learned Magistrate had relied upon the enquiry report submitted by the Divisional Joint Registrar Co-operative Societies (Audit) deals with every relevant aspect and the conclusions. Even for the sake of argument the said report is taken into consideration, the relevant paragraph is reproduced as follows :

> *"To conclude the fraud reported in the Akola urban Co.op. Bank Ltd. as described in the above six broad categories, it is observed that heavy amount of fraud was committed by officers of the Bank. There was a well planned strategy to defraud the Bank and continued for a long period of 14 years without knowledge of top management statutory auditors and RBI inspectors due to fact that there was no internal audit and internal control in the Bank since many years together, checking system of Bank, Reconciliation statement was not being closely monitored during the period of fraud. The reconciliation department was not subject to external overview, concurrent audit was not conducted as there was no mechanism of external oversight and mainly there was no transfer policy for employees of the bank upto 2013. It is observed that the officers responsible for fraud were posted so many years in the same post and therefore it becomes*

> *easy for them to commit the fraud and to continue and conceal the same for many years together."*

27. The report further reveals that the enquiry report given by Divisional Joint Registrar Co-operative Society and the findings given shows that the applications for loan were assessed, proposed and sanctioned by the then General Manager/Chief Executive Officer that the sanction of the loan was not ratified by the Board of Directors and the loans were granted without proper authority and without knowledge of Board of Directors and the sanction was not signed by the Chairman or Vice-Chairman of the Bank and was not ratified by the Board of Directors. Thus, at the face value it is apparent that the alleged fraud was committed by the officials of the bank without the knowledge of the top management i.e. Directors, Statutory Auditors and RBI Inspectors. Admittedly, all the applicants in Criminal Application No.777/2018 are either present Directors or Ex-Directors. The enquiry report specifically shows that the alleged fraud was committed without the knowledge of the said Directors as no sanction was obtained from the Board of Directors. The applicant - Prakash Chandmal Bhandari in Criminal Application No.815/2018 is the Statutory Auditor who was appointed for a special audit. Admittedly, he has no concern with the alleged fraud. The enquiry report shows that statutory auditor of the Co-operative Bank M/s. P.C. Bhandari and Company had conducted

statutory audit of the bank in the year 2012 and 2013 and issued their final audit report. Thus, it is apparent that he has no concern with the said fraud.

28. After giving consideration to the averments made by non-applicant No.2 in the complaint and the submissions made by the applicants, which is apparent that *prima facie* the recitals made in the application did not indicate that the applicants were involved in the alleged fraud. All the applicants are discharged after earlier enquiry by the Investigating Officer. They are discharged after considering the material collected by the Investigating Officer and after submission of the report by the Investigating Officer. Admittedly, exceptional case to file the second complaint is not made out by non-applicant No.2. It is well settled that the second complaint on the same facts cannot be made unless there are exceptional circumstances. Admittedly, first complaint was not dismissed on default but the dismissal of the complaint was on merits. Second ground for treating the complaint as maintainable that when there is miscarriage of justice. Here it is not the case that there was manifest miscarriage of justice in disposal of such complaint and thirdly no new facts are brought on record to held the second complaint as maintainable. On the contrary, it is apparent that non-applicant No.2 had suppressed the earlier filing of the complaint and the discharge of

the accused from the said complaint. Secondly, even for the sake of arguments the allegations are taken as it is and the directions are issued on the basis of enquiry report. Said enquiry report specifically states that the alleged fraud was committed without the knowledge of the Directors. So no role is attributed to the present applicants in the said enquiry report. The observations in the enquiry reports sufficient to show that the alleged fraud was committed without their knowledge even the sanction of loan was without their permission and without proper authority and without the knowledge of Board of Directors. The sanction was not signed either by Chairman or Vice-Chairman of the Co-operative Bank and was not ratified by the Board of Directors. Thus, even if the enquiry report is taken into consideration as it is, no offence is made out against the present applicants, therefore, compelling the applicants to face further prosecution would be abuse of process of law. It is observed by the Hon'ble Apex Court in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** wherein it is held that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

29. In the result, the criminal applications deserve to be allowed. Hence, we proceed to pass the following order :

(a) Both the criminal applications are allowed.

(b) The First Information Report vide No.20/2017 registered at police station City Kotwali, Akola against the present applicants for the offences punishable under Sections 409, 420, 468, 471, 120(B) read with Section 34 of the Indian Penal Code is quashed and set aside.

30. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.) **(ROHIT B. DEO, J.)**

**Divya*