

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 134 OF 2022

1. Maroti s/o Keshavrao Jagtap,
Age : 85 years, Occ.: Pensioner,
R/o : Yeshwant Society,
Tq. Udgir, Dist. Latur. (died on 09.01.2023)
(deleted as per leave granted vide order dated 09.02.2023)
 2. Balaji s/o Rajaram Chatlawar,
Age : 73 Years, Occu.: Business,
R/o : Yeshwant Society,
Tq. Udgir, Dist. Latur.
- ...Petitioners

Versus

The State of Maharashtra,
Through Police Station Officer,
Udgir (City) Police Station,
Tq. Udgir, Dist. Latur.
(Copy to be served public prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.)

...Respondent

...

Advocate for Petitioner : Mr. Chavan P. S.
APP for Respondents/State : Mr. P. N. Kutti

...

CORAM : KISHORE C. SANT, J.

DATE : 9th FEBRUARY 2023.

ORAL JUDGMENT :

1. Heard the learned Advocates for the respective parties at length. By consent of the parties, taken up for final disposal.
2. At the outset, the learned Advocate for the petitioner submits that he could not carry out an amendment by deleting the petitioner no.1 pursuant to order dated 01.02.2023. He prays for leave to delete the petitioner no.1 forthwith. Leave is granted. Amendment to be carried out forthwith.
3. The petitioner is an accused in the offence registered on the basis of FIR lodged by one Ashok Bharatrao Kamble, an Auditor, who conducted audit of one Yeshwant Co-operative Housing Society, Udgir. The FIR was registered on 08.03.2014 bearing FIR No.16/2014. The allegation against the accused no.1 is that while acting as administrator, she had kept the record with herself and has committed misappropriation as per the particulars given in the FIR. Against these petitioners, the allegation is that they approved the expenses with connivance with accused no.1. On the basis of crime, the investigation

was conducted and charge-sheet was also filed. All the accused persons filed an application for discharge under Section 239 of the Code of Criminal Procedure. The learned trial Judge by considering the material prima-facie recorded that a case is made out against accused to proceed with the prosecution.

4. The Court has also recorded that all the four reports, those are filed on record specifically show that allegations are made out against the accused persons and rejected the application by order dated 03.11.2018. The present petitioners filed Criminal Revision Application No.5/2019 in the Court of learned Sessions Judge, Udgir, Dist. Latur. The learned Sessions Judge also after considering the material on record by way of charge-sheet recorded that when the Administrator was appointed on the society, the accused no.1 has illegally conducted the meeting, passed resolution and gave sanction for expenses incurred by the co-accused and rejected the Criminal Revision Application. Challenging this order, the petitioner is before this Court.

5. The main submission of the petitioner is that considering the

reports prepared by the parties under Section 88 of the Maharashtra Co-operative Societies Act, 1960 ('Societies Act' for short), the liability is only upon accused no.1, no liability is fastened upon the present petitioner. He further submits that there is no amount transferred in the account of this petitioner. So far as considering the report under Section 88 of the Societies Act, he relied upon a judgment by the Division Bench of this Court at Nagpur in Criminal Application No.613/2012. Wherein the Division Bench was pleased to allow the application by considering the documents on record. It was a case where the applicant was working as a Clerk for a period of 01.04.2006 to 18.07.2006. In that case, no specific role was attributed to the applicant in the FIR. Even in the enquiry conducted by the Competent Officer under Section 88 of the Societies Act, no incriminating material was found against the applicant. In that case, the FIR was mainly against the Directors, Manager and Members of the Staff of the said Society. The allegation was that huge amount was disbursed to the Creditors of the said Bank without taking adequate security. Further allegation was that the Directors and the Manager of the said Bank had not taken any steps for recovery of the said amount, which caused a

huge loss to the said Society. In view of the facts, the criminal application was allowed.

6. The learned Advocate further relied upon the judgment reported in 2013 ALL MR (Cri) 2712 in the case of **Bhaskar Shamrao Bhosle & Anr. Vs. State of Maharashtra**, in Criminal Application (APL) No.555/2012. In that case also, the offence was registered against the Directors and the Members of the Staff of the Society on the allegation that huge amounts were disbursed to the debtors without taking adequate security and no steps were taken to recover the amount. Though the enquiry was also conducted and report was submitted, but nothing was found against the applicants therein. The facts were similar to the application no.613/2012, which is already considered and in view of that the Criminal Application (APL) was allowed and no different view was taken.

7. The further judgment relied upon by the learned Advocate is reported in AIR 2009 Supreme Court 1013 in the case of **Rukmini Narvekar Vs. Vijaya Satardekar and Ors.**, wherein both the Hon'ble

Judges have given separate judgments. In paragraph no.9 of the judgment delivered by Hon'ble Justice Altamas Kabir, which is reproduced below :

"9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred."

. In paragraph no.29 of the judgment delivered by the Hon'ble Justice Markandeya Katju, which reads as below.

"29. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly

demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.”

. It is held that the other Court can look into the material produced by the defence at the time of framing of the charges in very rare cases, where the material convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. This Court does not find that in this case, the allegations are totally absurd or totally concocted. Thus, on this fact, this judgment is not applicable.

8. The last judgment relied upon by the learned Advocate is reported in AIR 2004 (SCW) 6813 in the case of **State of Orissa Vs. Debendra Nath Padhi**. In this case, in fact the Hon’ble Apex Court has clearly held that no material produced by the accused to be considered at the stage of framing of charge or while considering the application for discharge. In specific terms, it is held that the judgment in the case of Satish Mehra does not lay down the correct position, wherein it is held that

the material produced by the accused can be considered.

9. The learned Advocate further submits that this Court while exercising the powers under Section 482 of Cr.P.C. and under Articles 226, 227 of the Constitution of India, can very well take note of the material produced by the accused and can consider the same.

10. The learned APP supports the order passed by the learned Court below by submitting that at this stage the defence of the accused cannot be considered and only the material which is produced by the prosecution at the stage needs to be considered. In this case, there are allegations with material showing prima facie involvement of the accused/petitioner.

11. This Court finds that at this stage, report under Section 88 of the Co-operative Societies Act cannot be considered as it would be a matter of defence by the accused. This Court does not find any perversity or illegality committed in the order passed by the learned Revisional Court and there is no merit in the petition and the same is therefore dismissed.

12. The submission that this Court while exercising the powers under Section 482 of Cr.P.C. and under Articles 226, 227 of the Constitution of India, can take notice of the material produced by the accused. This Court finds that no case is made out to consider such material.

13. The Writ Petition is disposed off in the aforesaid terms.

[KISHORE C. SANT, J.]

Najeeb.