IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

150 CRIMINAL APPLICATION NO.1742 OF 2022

Ramakant Wamanrao Jahagirdar

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Bhaskar Digambar Dukre

..RESPONDENTS

AND

CRIMINAL APPLICATION NO. 887 OF 2022

Mohd Yusuf S/o Mohd Sultan Ansari

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Bhaskar Digambar Dukre

..RESPONDENTS

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Advocates for Applicants : Mr.A.S. Bajaj & Mr.N.S. Shaikh
APPs for Respondent/State : Mr.N.T. Bhagat & Mr.S.J. Salgare
Advocate for Respondent No.2 : Mr.Dhaware Rajkumar B.

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**
DATED : 17th AUGUST, 2023.

PER COURT :-

. Both these applications, under section 482 of the Criminal Procedure Code, are being decided by this common order since challenge therein is to crime vide C.R. No.09 of 2022 registered with Sonpeth Police Station, Parbhani, for the offences punishable under sections 409, 465, 467, 468, 471 read with 34 of the Indian Penal

Code and the consequential charge-sheet in R.C.C. Nos.491 of 2022 pending before the learned Chief Judicial Magistrate, Parbhani.

2. Heard.

3. The first information report (for short, “FIR”) has been lodged by one Bhaskar, who has purchased a house property, being Gram Panchayat House (GPH) No. 343 situated at village Sonpeth for Rs.65,000/- on 2nd June, 2020. The gist of averments in the FIR is that the applicant - Ramakant, Chairman of Sonpeth Nagari Sahakari Bank (“the bank”) and the applicant – Mohd Yusuf in Criminal Application No.887 of 2022, being attesting witness to deed of mortgage were hand in gloves with the co-accused namely the main borrower and others and thereby duped the bank by granting loan as against the non-existing property, being GPH No.543 and ultimately duped the informant as well, since the informant purchased the another property, GPH No.343 as bonafide purchaser for valuable consideration. According to the learned advocate for the informant, the bank officials granted various loans as against non-existing property. The involvement of the applicants in the alleged crime is writ-large. The averments in the FIR make out a case against the applciants. As such, no relief under section 482 of the Criminal Procedure Code can be granted.

4. The learned advocate for the Chairman of the Bank and

the learned advocate for the attesting witness would submit that the main accused (borrower) had initially availed a loan of Rs.1,00,000/- in 2006. It was initially a service loan. The loan amount was enhanced to Rs.2,50,000/- in 2010. Then again it was increased to Rs.3,50,000/- in 2011. That time the borrower (accused no.9) gave property (GPH No.343) as security and deed of mortgage was executed.

5. Again in 2014, additional loan of Rs.5,00,000/- was advanced to him as against the mortgage of the property, being GPH No.543. Again in 2018, the loan was topped up to Rs.10,00,000/-. Again deed of mortgage was executed of both the properties as a security for additional loan amount. The bank after accused no.9 defaulted on the loan had approached the Assistant Registrar, Co-operative Societies and obtained the certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 (“MCS Act”) and proceeded against the borrower and securities. Then it was realised that the property, being GPH No.543 was infact not in existence. The bank, therefore, approached the concerned Police Station. Since the concerned Police Station Officer did not pay any heed to the report lodged by the Bank, the Bank approached this Court seeking directions for transfer of the investigation to Special Crime Branch. In the meanwhile, the High Court was informed that the Police did register a crime pursuant to the report lodged by the informant herein.

6. We have considered the submissions advanced. Perused the FIR and related police papers. The factual matrix is not in dispute. The applicant - Ramakant was the Chairman of the Bank at the relevant time. He has been made an accused only because he is party to the deed of mortgage as mortgagee on behalf of the bank. We find nothing to indicate that he was in any way hand in gloves with the borrower or other co-accused. Reiteration of the facts is necessary here at. The accused no.9 was the Headmaster of a school. Way back in 2006, he availed loan of Rs.1,00,000/-. It was service loan. In 2010, the amount of loan was increased to Rs.2,50,000/-. Then it was again increased to Rs.3,50,000/- in 2011. That time, the borrower (accused no.9) mortgaged the Gram Panchayat Property (GPH No.343) as security for the said loan. In 2014, he availed the additional loan of Rs.5,00,000/-. He offered additional security in the nature of mortgage of property (GPH No.543). Then 2018, the loan amount was increased to Rs.10,00,000/-. Further mortgage deed was executed in respect of both the properties, being GPH nos.343 and 543. When he defaulted on the loan, bank approached the concerned authorities and obtained certificate under section 101 of M.C.S. Act and put it to execution. When it was realised that property, being GPH No.543 was not in existence, the bank, therefore, approached concerned police station.

7. The present crime has been registered at the behest of the one who has purchased the property, being GPH no.343 in 2020 for a paltry amount of Rs.65,000/-, when the said property was in fact auctioned in a recovery proceedings and it fetched Rs.22,00,000/-. Less said the better about the intention of the informant herein.

8. No doubt the borrower and others namely the advocate, who has given search report, Gram Sevak, who has issued Gram Panchayat property extract of non-existing property and panel valuer, who gave valuation report of non-existing property are necessarily hand in gloves. Before us there is nothing to indicate that the present applicant – Chairman to have been privy to the said crime. He has been named in the FIR simply because the mortgage deed was executed in his favour in capacity as Chairman of the Bank. So far as regards other applicant – Rakamant is concerned, he is an attesting witness to the deed of mortgage executed in 2014. Admittedly, he is colleague of the main accused. Needless to mention, the legal position is settled that the attesting witness is not expected to know the contents of the documents. Neither the State nor learned advocate for the informant could bring to our notice that this applicant (attesting witness) was in the know that property GPH no.543 was in fact not in existence and still it was given as security and knowing the same, he attested the mortgage deed. As such, in our view, there is no material to proceed against both the applicants. Needless to

mention that the property which is subject matter of mortgage or any kind of security can be subject of sale. It needs no mention that encumbrance would run with the property, which has been purchased by the informant. It is not known as to whether the main borrower (accused no.9) had given undertaking to the Bank that he would not sale the mortgaged property without prior permission of the bank. It is a matter between him, bank and informant. It is reiterated that we do not come across any prima facie material to proceed against the applicants herein. Directing them to stand trial based on no material would be an abuse of process of Court. We are, therefore, inclined to allow the applications. In the result, the Criminal Application No.887 of 2022 is allowed in terms of prayer clauses “B” and “C-1”. Criminal Application No.1742 of 2022 is allowed in terms of prayer clauses “B”, “d” and “e”.

(SANJAY A. DESHMUKH, J.) **(R.G. AVACHAT, J.)**

sga/