

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2274 OF 2022

1. Akash s/o.Namdeo Dhakane
Age 14 years, Occ. Education,
since minor under guardian
of his father,
Namdeo s/o. Dnyanoba Dhakne
Age 42 years, Occ. Agriculture,
R/o. Aswalamba, Tal. Parali (V),
District Beed.
2. Suresh s/o. Rajaram Dhakne
Age 26 years, Occ. Education,
R/o. At above.
3. Avinash s/o. Bankati Dhakne
Age 28 years, Occ. Education,
R/o. At above.
4. Mukta D/o. Vyankati Dhakane @
Mukta w/o. Dashrath Munde,
Age 28 years, Occ. Household,
R/o. Indapwadi, Tal. Parali (V),
District Beed.
5. Priyanka D/o. Vaijnath Gutte @
Priyanka w/o. Kailas Dhakne
Age 25 years, Occ. Household,
R/o. Aswalamba, Tal. Parali (V),
District Beed.
6. Santosh s/o. Dattu Dhakne
Age 16 years, since Minor
Through her father,
Dattu s/o. Bhagoji Dhakne,
Age 46 years, Occ. Agriculture
R/o. At above.

7. Vishnu s/o. Vishwanath Gutte
Age 28 years, Occ. Agriculture,
R/o. Aswalamba, Tal. Ambajogai,
District Beed.

8. Munjahari @ Shubham s/o.
Babruwan Dhakne
Age 23 years, Occ. Agriculture
R/o. as above.

...Applicants

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Ambajogai (Rural),
Tal. Ambajogai, Dist. Beed.
(Copy to be served on A.P.P
High Court of Judicature of
Bombay Bench at Aurangabad)

2. Jivraj s/o. Maroti Dhakne
Age 63 years, Occ. Agriculture,
R/o. Aswalamba, Tal. Parali (V),
District Beed.

...Respondents

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Mr. S.B. Solanke for the Applicants.
Mr. P.G. Borade and M.M. Nerlikar, APPs for the
Respondent No.1-State.
Mr. A.R. Rathod for retired Senior Police Inspector.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

JUDGMENT RESERVED ON : 23/02/2023

JUDGMENT PRONOUNCED ON : 03/05/2023

JUDGMENT (Per : Anuja Prabhudessai, J.) :-

1. This is an Application under Section 482 of the Code of

Criminal Procedure for quashing the Charge-sheet No.56/2013 registered as R.C.C. No.158 of 2013 pending on the file of learned Judicial Magistrate, First Class, Ambajogai qua these Applicants. The said case arises from FIR No.19 of 2013, registered with Ambajogai (Rural) Police Station, District-Beed for the offences punishable under Sections 420, 467, 468, 471, 472 and 406 r/w 34 of the IPC.

2. Learned counsel for the Applicants submits that the Applicants are not involved in commission of the said crime. In fact, the Applicants were minors as on the date of registration of crime, despite which charge-sheet has been filed against them before a regular court.

3. Per contra, learned APP submits that several persons had obtained loan in the name of fictitious persons on the basis of fraudulent documents and had thereby misappropriated an amount of Rs.25,00,000/-. He submits that the FIR was registered against the borrowers, whose names were disclosed by the Bank/Society.

4. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforesaid crime was registered pursuant to the FIR dated 25/02/2023 lodged by Jivraj Dhakne, who was the Chairman of Seva Sahakari Society, Aswalamba, Parali, Dist. Beed from the year 2009-2011. The facts narrated in the FIR indicate that several agriculturists had availed loan from the said Co-operative Society. They failed to repay the loan. It was revealed that the persons who were stated to be borrowers, did not have any agricultural land. These borrowers, who claimed to be agriculturists, had availed loan on the basis of false and fabricated 7/12 extract, declaration and undertaking and had thereby cheated the Bank/Credit Society to the tune of Rs.28,57,616/-.

6. The crime was investigated and charge sheet was filed on 08/07/2013 before learned Magistrate, Ambajogai. It is stated that the case against some of the accused is still pending trial and that the Complainant has also been arrayed as an accused in the said case. The crime against these Applicants is sought to be quashed on the ground that they were minors as on the date of the alleged incident.

7. It is true that whenever a claim of juvenility is raised, an

inquiry needs to be conducted in accordance with the provisions of Juvenile Justice Act and the Rules framed thereunder. In our considered view, no such inquiry is necessitated in the present case as the charge sheet as well as the affidavit filed by Vinod Golave, the Police Inspector, Ambajogai reveals that the Applicants were below 18 years of age as on the date of the alleged crime. Though the Police Inspector has stated that the Applicant Nos.3 and 4 were 19 years of age as on the date of registration of crime i.e., in the year 2013, it is to be noted that the alleged incident is of the year 2009-2011 which fact would clearly indicate that even these two Applicants were minors as on the date of the incident. In fact, the records reveal that the Applicant No.1 was one year old, the Applicant No.2 was 13 year old, the Applicant No.5 was 12 year old and the Applicant No.6 was 03 year old as on the date of the incident. The records reveal that though all the Applicants were within the age group of 01 to 15 years, they have been shown as absconders in the charge sheet filed before the regular Criminal Court. Despite sections 82 and 83 of the Indian Penal Code, the Investigating Officer has filed charge sheet against some of the Applicants who were below 12 years of age. This reflects either ignorance of law or callous or indifferent attitude of the Investigating Officer. Such conduct, which needs to be deprecated, would justify

imposing costs to be recovered from the Investigating Officer who has since retired.

8. It is pertinent to note that the first informant had specifically stated that the loan was obtained by forging documents. The names, addresses as well as the age of the borrowers were disclosed to the Investigating Officer. The Investigating Officer was therefore duty bound to ascertain the identity of those who had impersonated these minors, prepared false documents, borrowed loan in the name of the minors and thereby cheated the Bank. The Investigating Officer has allowed the real culprits to go scot free and has instead implicated these minor Applicants solely on the basis of the list furnished by the District Central Co-operative Bank, Beed without even ascertaining their age and identity. The Investigating Officer who has since retired, has filed his affidavit wherein he has expressed helplessness and sought to justify the action on the ground of non-cooperation of villagers. He has stated that charge sheet was filed invoking section 299 of the Code of Criminal Procedure. Suffice it to say that the Investigating Officer was required to submit the report in the prescribed form. The Code of Criminal Procedure does not contemplate filing of charge sheet under section 299 of Cr.P.C. This

provision only enables the Magistrate to record the evidence in the absence of accused, if it is proved that an accused person has absconded and that there is no immediate prospect of arresting him.

9. The records indicate that the Investigating Officer has filed the charge sheet against these Applicants mechanically without even ascertaining their age as well as role in cheating the Bank. These Applicants were below 18 years of age as on the date of the incident. They were not involved in availing loan, forging the documents and/or cheating the Bank/Co-operative Credit Society. Hence, allowing the proceedings to continue against these Applicants will be sheer abuse of process of law.

10. Having gone through the entire records, in our considered view, this is a fit case to exercise powers under section 482 of Cr.P.C. and quash the proceedings as against these Applicants. Hence, the Application is allowed. The charge sheet No.56/2013 registered as R.C.C.No.158/2013 pending before learned Magistrate, First Class, Ambajogai is hereby quashed qua these Applicants. The State is directed to pay costs of Rs.50,000/- to be paid to the Juvenile Justice Fund within a period of six weeks from the date of the order, the

details of which are as follows :-

Name of Account Holder	:	DY-COMMI. (CHILD DEVELOP) AND MEM.SECY & TRY M S CHILD FUND
Account No.	:	11099464354
Name and Address of Bank	:	State Bank of India, Pune Main Branch, Collector Office Compound, Pune.
Branch Code	:	454
IFSC	:	SBIN0000454
MICR	:	411002002

11. The costs shall be recovered from the pecuniary benefits of the Investigating Officer.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)