**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

105 **CWP-4376-2023 (O&M).**
Reserved on: 10.05.2023.
Date of Decision: 26.05.2023.

KAMALJEET SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: Dr. Pankaj Nanhera, Advocate, and
Mr. Rahul Gautam, Advocate, the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana,
for respondents No.1, 2 and 5.

None for respondents No.3 and 4.

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VINOD S. BHARDWAJ. J (ORAL)

This writ petition has been filed by a Retired Senior Accountant of the Bank for seeking to effect recovery, after conducting departmental enquiry against respondents No.6 to 8, for the loss that has occasioned as a result of the misconduct of the said respondents. A further direction has been sought to respondent No.5-Director General of Police, to register an FIR against the private respondents and to hand over the investigation to any independent agency or to the Special Investigation Team on account of corruption of the public money.

The petitioner claims that he was in the service of respondent Bank and had retired on 30.09.2020 after serving for nearly 34 years. It has been alleged that there had been certain chronic defaulters who caused huge loss to the Bank which came up with a One Time Settlement Scheme (OTS) that was scheduled to remain operational till 31.07.2007 and was later on extended upto 31.03.2008. It is alleged that the private respondents namely Rajiv Mathur-respondent No.6, Smt. Gurpreet Kaur-respondent No.7 and Anand Saxena-respondent No.8 conspired with each other and committed corruption with the respondent bank thus caused embezzlement to an extent of Rs.10 crores which could not be recovered despite sufficient documents on record and the decision of the Board of Directors to the said effect. It is further averred that audit of One Time Settlement Scheme (OTS) was done and a report had been submitted by the Chartered Accountant which showed that it was a case of gross negligence on the part of the authorities concerned. The Registrar of Cooperative Societies wrote a letter to the Chairman, The Panchkula District Central Cooperative Bank Limited that the matter be placed before the Board of Directors and an action be taken immediately against the guilty officials and also to effect the recovery vide his letter dated 06.01.2012. Thereafter the matter was put up before the Board of Directors and it opined in the report dated 10.10.2012 (Annexure P-4) that an amount of Rs.3,32,90,854/- be recovered from the delinquent officials i.e. the then Managing Director (respondent No.8), General Manager (respondent No.7) and Project Officer (respondent No.6) for having committed breach of trust. An opinion was thereafter sought by the General Manager against the private respondents whereupon it was informed that they were guilty of having committed fraud by misusing their power against the interest of the Bank and in favour of the Company-Anil Pesticides Limited for which they are liable to be prosecuted. The amount in question had not been recovered and no action against the private respondents has also been taken despite repeated requests having been made by the petitioner. It is also averred that the matter in question had been sent to the Vigilance Department and even the Vigilance Department had recommended to respondent no.1 for taking action against the private respondents No.6 to 8 vide their letter dated 05.08.2020. However, no action was taken thereupon. A representation was thereafter submitted by the petitioner to respondent no.1 i.e. State of Haryana on 23.09.2022 for initiation of criminal action as well as for recovery of the embezzled amount, however, the said representation is still pending. Subsequent representations were also sent by the petitioner through E-mail on different dates, however, no action was taken, hence, the present writ petition had been filed.

Reply on behalf of respondent No.3 i.e. the Haryana State Cooperative Apex Bank Limited, Chandigarh has been filed through the Managing Director of the said Bank. The relevant extract of the reply is reproduced hereinafter below:-

"3. That the allegations which are the subject matter of the representation (Annexure P-7) filed by the petitioner relate to the account of one M/s Syschem India Ltd. Kalka, which was previously known as M/s Anil Pesticides Ltd., wherein a loan of Rs.3 Crores was advanced for setting up of the industrial unit for manufacturing of pesticides in the year 1995. The amount became overdue because of non-repayment of installments. Eventually, the company was invited for One-Time Settlement (OTS) of the account as submitted by the company. The OTS proposal submitted by the company was considered by the Board of Administrators of the Panchkula Central Cooperative Bank Ltd., Panchkula in its meeting held on 04.12.2007 and it was resolved to refer the proposal of OTS to some technical experts/Chartered Accountant for detailed appraisal and suitable guidelines to the bank for recovery of the sticky loan. Copy of resolution No.11 dated 04.12.2007 is annexed as Annexure R-1. A detailed report/advice dated 25.10.2008 (Annexure R-2) was received from HCB& Associates, Chartered Accountants and the same was considered by the Board of Administrators of the Bank in a meeting held on 07.11.2008. After due deliberations on the detailed report/advice so received from the Chartered Accountants, the OTS proposal was accepted by the Board of Administrators, subject to the approval by the Registrar, Cooperative Societies, Haryana. Copy of resolution passed by the Board Administrators of the Panchkula Central Cooperative Bank Ltd., Panchkula in meeting dated 07.11.2008 is annexed as Annexure R-3. Thereafter, the Registrar, Cooperative Societies also granted approval vide memo dated 24.09.2009(Annexure R-4) and thereafter, the company was allowed One-Time Settlement (OTS) of its account.

4. That later on, at the time of audit of accounts of the bank, some lapses were reported and therefore, in order to find out the facts, the then competent authorities deemed it appropriate to get an enquiry conducted to find out, if Sh. Rajiv Mathur, the then Project Officer, and Smt. Gurpreet Kaur, the then General Manager of the Panchkula Central Cooperative Bank Ltd., Panchkula, were sincere in their duties or had committed any irregularity. Accordingly, the concerned officials were issued chargesheets for (i) breach of the rules & violation of instructions; (ii) acting in a manner which was prejudicial to the interest of the bank and likely to involve the bank in serious loss; (iii) negligence in performance of official duties causing loss to the bank. The Enquiry Officer was appointed and the enquiry report thus submitted, was thereafter placed before the Staff Sub-Committee under the Chairmanship of the then Principal Secretary, Cooperative Departments & Chairman, HARCO Bank. The competent authority, after detailed deliberations decided to issue the delinquent an advisory note and a copy of the warning was placed in the personal file of these officers. Disciplinary proceedings were also initiated by the Government against Sh. Anand Saxena, the then Managing Director of the Bank and he was also absolved of the charges by the Government.

5. That much thereafter, one Shiv Kumar S/o Roshan Lal R/o House No. 94, Sector 15, Panchkula had submitted a police complaint against the aforementioned officers. While taking cognizance of the said complaint, an enquiry was conducted by State Vigilance Bureau, through a DSP level officer who concluded vide a detailed report, that the action of the delinquent officials, did not establish any criminal misconduct in the absence of any mens rea. Hence, the *complaint was filed on 22.05.2020 by the Director General, State Vigilance Bureau, Haryana, It was also recorded in the report that in case the Bank had not taken this decision, it would not have been in a position to recover the amount due and would have suffered a financial loss. True translated copy of the report of State Vigilance Bureau are annexed as Annexure R-5.*

6. That since, the matter has already reached its logical conclusion after the acceptance of the recommendations of the Vigilance Bureau by the State Government with respect to the absolving of the Bank officials of all allegations. therefore, the present writ petition preferred by the petitioner is completely bereft of any merit as the departmental proceedings as well as enquiry into the allegations have already concluded and the findings have been accepted by the State Government."

A separate status report by way of affidavit of Registrar Cooperative Societies, Haryana, on behalf of respondent No.2 was also filed wherein it was stated as under:-

"2. That the representation dated 23.09.2022 (Annexure P-7) made by the petitioner was sent to Managing Director, Harco Bank (Respondent No. 3) with the request to send comments on the same. The comments have been received in this regard.

3. That, as mentioned by the petitioner in Para No. 11 of the writ petition, the matter was also enquired by State Vigilance Department, Haryana concluding part of which is as follows-

> *"……….Considering these facts, the officers of the bank Sh. Rajiv Mathur Project Officer and Smt. Gurpreet Kaur General Manager were spared by issuing warning only and the departmental enquiry of Sh. Anand Saxena M.D. was closed, which is correct. In the whole enquiry, no such facts came to light against Sh. Rajiv Mathur Project Officer, Smt. Gurpreet Kaur General Manager and Sh. Anand Saxena M.D. which could prove their criminal intent. In light of all the above facts, it is recommended to file this enquiry Sh. Rajiv Mathur Project Officer, Smt. Gurpreet Kaur General Manager and Sh. Anand Saxena M.D. If Govt. wishes then explanation from B.O.D. may be taken. Therefore, the charge stands proved to the above limit."*

The above report was examined by Govt. and orders were issued by the office of Chief Secretary, Haryana, the operative part of which is as follows-

> *"(i) In reference to the above subject.*
>
> *(ii) The above cited matter was got preliminarily enquired State Vigilance Bureau, Haryana. This Department examined the enquiry report and after examination, it has been decided that, as per suggestion of State Vigilance Bureau, action be taken after seeking comments from Chairman/Board of Directors (B.O.D.) The Panchkula Central Cooperative Bank Ltd., Panchkula.*
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> *(iii) One copy each of Final report of Investigating Officer and letter no. 4586/SVB(H) dated 22.05.2020 of comments made by Director General, State Vigilance*

Bureau on the same, is being sent to you for taking action accordingly and for intimating this Department regarding the action taken by you."

4. That, in compliance of the above directions issued by Govt., copies of proceedings for the meeting of Board of Administrators of the bank held on 04.12.2007 and 07.11.2008 were sought from General Manager, District Central Cooperative Bank, Panchkula so as to know the details of administrators/officers who participated in these meetings and comments could be sought from these participants of such meetings. These copies were received and it was found that the meeting dated 04.12.2007 was attended by Sh. J.P. Panjeta, the then Additional Registrar Cooperative Societies, Sh. Anand Saxena, the then M.D. District Central Cooperative Bank Panchkula and Smt. Gurpreet Kaur nominee of Harco Bank. Further, the meeting dated 07.11.2008 was attended by Sh. J.P. Panjeta, the then Additional Registrar Cooperative Societies, Sh. Kapoor Singh Gill, the then Deputy Registrar Cooperative Societies Kurukshetra, Sh. Anand Saxena, the then M.D. District Central Cooperative Bank Panchkula and Sh. V.P. Singh, General Manager, Nominee of Harco Bank. Therefore, comments have been sought from these participants/the then members of Board of Administrators of the bank.

Once the comments are received from the then member of Board of Administrators of the bank, the decision on the same as well as on the representation dated 23.09.2022 (Annexure P-7) will be taken by the deponent accordingly. Therefore, it is prayed that the present petition may kindly be dismissed qua Respondent No.2."

Learned counsel appearing on behalf of the petitioner has vehemently contended that the respondents have failed to take action despite repeated reminders sent. He refers to the status report filed by way of affidavit of Registrar Cooperative Societies, Haryana, wherein it has been stated by him that the representation dated 23.09.2022 sent by the petitioner has already been forwarded to the Managing Director of the Harco Bank for his comments and that the said comments have already been received. It is stated in the reply that the proceedings of the meeting of the Board of Administrators of the Bank was held on 04.12.2007 and 07.11.2008 as per the orders issued by the office of Chief Secretary and that on receipt of the comments from the Board of Administrators of the Bank, a decision on the same as well as on the representation dated 23.09.2022 (Annexure P-7) shall be taken by the Registrar of the Cooperative Societies.

Learned counsel for the petitioner has laid emphasis on the minutes of the meetings that took place in October 2012 qua the One Time Settlement Scheme (OTS) which was scheduled to remain till 31.07.2007 and its extension as well as the benefit was wrongly extended by the bank. He has placed reliance on the following extract of the meeting held on 10.10.2012:-

> *"3. Sh. Rajiv Mathur, Project officer and Smt. Gurpreet Kaur, General Manager misled and concealed the facts and not presented factual position before B.O.D. in the meeting held on 04.12.2007 about the existence of scheme.*

The Board of Administrator was misled by not disclosing the fact that the sale case U/s 75/76 of the Haryana coop. Societies Act 1984 had already been preceded and order regarding appointment of Receiver U/s 82 of the Haryana coop. Societies Act 1984 was issued by the A.R.C.S. Naraingarh on dated 19.10.2006(Annexure-8). The matter was placed in the meeting dated 17.07.2007 but the item was postponed as Managing Director of the company or any authorized representative did not appear before the Board of Administrators in spite of delivery of notice to them. But the matter of appointment of receiver in the company as per decision of BOA's on dated 17.07.2007(Annexure-2) was not placed in the next BOA's meeting dated 04.12.2007. The agenda or one time settlement was put forward in BOA meeting of 4-12-2007 when there was no approval nor there was any such scheme so it should have been the agenda that as the scheme has expired so the decision has to be taken for the appointment of the receiver and not for the one time settlement but by concealing the previous resolution dated 17-07-2007 of appointment of receiver (Annexure- 2), the above said Official/Officers mislead the BOAS. If the receiver was appointed for the company in time on 04.12.2007 the actual value of the land, building, plant and machinery, license and guarantee of the two directors of the Company could have been assessed properly and genuinely Instead of considering the self made proposal submitted by the company.

The version given by the above said persons by way of their explanation to this allegation is again a try to twist the actual facts as per their convenience. The project officer did not bring in the notice about the Order for the appointment of the receiver, re-schedulement, moratorium *period, due Installments etc. It is pertinent to mention here that the from the bare perusal of the resolution dated 04.12.2007, it is ample clear that the decision was taken without considering the facts that the valuation of the properties and assets were never taken into consideration nor it was taken into consideration that the loan was a secured loan and in haste the decision was taken by just forwarding the proposal put forward by the company where as it was the duty of the above said officers/officials to check for the welfare of the bank.*

4. The proposal of company regarding one time settlement was separately dealt, and separate norms were considered and separate rules were applied by presenting a separate agenda, whereas for the same purpose a committee was constituted by the BOAs meeting Dated 17.07.2007.

A committee was constituted by the BOAs in its meeting dated 17.07.2007 (Annexure-2) to deal with the cases which can fall under the one time settlement scheme 2007 but despite that the case of the M/s Anil Pesticides Ltd., for One Time settlement of accounts was dealt by Rajiv Mathur & Gurpreet Kaur only. As per OTS scheme 2007 approved by BOA the account should be doubtful NPA on 31.03.2004 (Annexure-1) but the above said persons took the said date as 31.12.1998. The amount shown by the Company to the tune of Rs.13296573.00 as re-payment whereas, as per the Bank record the said amount was Rs.9283548.00 (Annexure-7). BOAs on dated 17.07.2007 (Annexure-2) approved the OTS scheme 2007 with the decision to send the proposal M/s Anil Pesticides Ltd. as per said scheme and the proposal submitted by the company was accepted by the officials/officers i.e the then Rajiv Mathur P.O. Gurpreet Kaur, G.M. & Anand Saxena, M.D. The said proposal was not according to the OTS scheme

2007.They got approval deposit of one time settlement amount of Rs. 30333961.82 which in fact comes to Rs.6.36.24.815.82 as per norms settled under OTS scheme 2007. On account of this the bank suffered financial loss of Rs.3,32,90,854.00.

The explanation put forward by the delinquent employees is again just an excuse and a try to conceal their wrongs. The company submitted the self made proposal on 20.10.2007. In response to our letter No. NFF/2007-08/3233 dated 18.08.2007 where as the OTS scheme 2007 was in existences i.e. upto 31.10.2007. In the light of these facts the excuse that as the company did not I deposit the 10% amount and this takes the proposal beyond OTS scheme 2007 is absolutely frivolous. In that case as detailed above, the above said Officials/Officers should have returned the proposal but they acted as employees of the company and not of the bank and illegally favoured the company by accepting the proposal on same terms as was submitted by the company. They did not take care of the facts that the said proposal should have been dealt with as per the prudential norms set by NABARD or as per the policy framed under OTS scheme 2007 only, but they framed their own rules and create a formula which was not according to OTS scheme 2007 and in this manner illegally favoured the company and caused huge losses to the bank. The loss caused to the bank be recovered from the guilty Officials/Officers."

A reference was also made to the letter sent by the Chief Secretary to the Additional Chief Secretary, Department of Cooperatives that proceedings be initiated as per the Government directions for the

Panchkula circle Cooperative Bank which was sent after the report of the State Vigilance Bureau on 22.05.2020.

Further, it has been averred that the matter had been enquired into by the State Vigilance Department wherein it was recommended that considering the facts of the case, the officers of the bank namely Sh. Rajiv Mathur, Project Officer and Smt. Gurpreet Kaur, General Manager were spared by issuing warning and the departmental enquiry of Sh. Anand Saxena, Managing Director was closed. No such facts came to light against the said officials which could prove their criminal intent. It was recommended to file the enquiry against the said officers and the Government had been permitted to proceed against the Board of Directors. The said report of the Vigilance Department was examined by the Government and an order was issued by the office of Chief Secretary to seek comments from Chairman/Board of Directors of The Panchkula Central Cooperative Bank Limited.

I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents placed on record.

The prayer made in the present petition is for registration of case against the private respondent who were then Managing Director, General Manager as well as the Project Officer by alleging that they had been found guilty of mis-conduct and for having caused a loss to the bank by concealing the material information and extending the OTS Scheme and that the recovery in question ought to be effected from the said respondents.

The petitioner laid emphasis on the minutes of the meeting held on 10.10.2012 qua the said aspect which such decision was taken on the basis of the Audit report as well as the communication sent by the Office of Registrar of Cooperative Societies, Haryana. However, it is also evident that the State Vigilance Bureau had examined all the said aspects and a report dated 22.05.2020 was sent which reads thus:-

> *"Against: Sh. Rajiv Mathur, Project officer, Smt. Gurpreet Kaur, GM and Sh Ananad Saxena, MD, the Panchkula Central Cooperative Bank Ltd. Panchkula.*
>
> *List: This preliminary inquiry is in compliance to your office list no. 65/06/2019-5 vigilance (1) dated 23.04.95/2020 of 2019, in which investigation was to be conducted for allegation on the basis of the complaint of Shri Shiv Kumar s/o Shri Ratan Lal, resident of House No. 94, Sector-15, Panchkula. The allegation has been investigated by Sh. Suresh Kumar, Deputy Superintendent of Police, State Vigilance Bureau, Panchkula under the supervision of Superintendent of Police, State Vigilance Bureau, Panchkula Division Panchkula. The statements/documents obtained by the Inquiry Officer during the course of investigation can be seen attached in the relevant files. As a result of the investigation, the decision taken by the Investigating Officer regarding the allegation is as follows-*

Allegations	Comments
Sh. Rajiv Mathur, P.O., Smt. Gurmeet Kaur, GM and Sh.	*From the perusal of the statements, documents and final report submitted by the*

Anand Saxena, MD, The Panchkula Pesticides Ltd., Kalka,Cooperative Bank Ltd., Panchkula, caused loss of Crores of Rupees to The Central Cooperative Bank Ltd., Panchkula, under One Time Settlement scheme in connivance with M/s Anil Pesticides Ltd., Kalka.	*the investigating officer, it has been found that on page number 7 of document file 5, Sh. Rajiv Mathur, Manager Harco Bank has clearly written in his noting file that if the proposal of The OTS scheme of the company is accepted, the bank will get Rs 40.00 lakh less in the settlement. It has come to the fore with the Time officials of NABARD that even if the principal in amount is recovered from the company, it would be appropriate because the present financial condition of the company is very bad and the amount of their security is also not that much. In the same noting, Sh. Rajiv Mathur has further written that if BODs make the OTS policy as per the guidelines of OTS scheme for those cases which have become NPA and those that do not come under any scheme, then that OTS policy may be forwarded to Registrar Cooperative Societies, Haryana for*

	approval. Sh. Rajiv Mathur has requested for permission for such approval by placing the same before BODs, by moving the noting file through General Manager and Managing Director and Sh. Anand Saxena, MD, has granted permission for the same and matter was placed before BODS. *It was decided by the BODS in its meeting held on 04.12.2007 that above said proposal may be sent to any Chartered Account for seeking their opinion. Thereafter, the matter was referred by Smt. Gurpreet Kaur, GM to Sh. Harish Bansal, Chartered Accountant, M/s HCB Associates, House No. 1720, Sector 21, Panchkula for opinion. The statement of Sh. Harish Bansal, Chartered was written in which he stated that he had prepared the report placed on page no. 15 to 21 of document file 5 and gave his opinion that on page*

	no. 21, the net worth of the company is Rs.185.18 lakhs and company's proposal is Rs.300.00 lakh under the OTS scheme, which equals to the original amount and he has endorsed this proposal. *Thereafter, the opinion of the Chartered Accountant was placed before the BODs in the meeting dated 07.11.2008. In this meeting, while accepting the proposal of the company, it was decided that the amount Rs.3,03,34,000/- which was taken under OTS, was correct from the financial point of view. If the bank had not taken this decision, the bank would not have got its principal amount and the bank would have suffered a financial loss. Keeping in view of these facts, the departmental enquiry officers of the bank exonerated Sh. Rajiv Mathur Project Officer and Smt. Gurpreet Kaur GM only with a warning and stopped the departmental inquiry of Sh. Anand Saxena*

	MD, which is appropriate. In this entire investigation, no such fact has come out that exposes any criminal mindset on part of. Sh. Rajiv Mathur Project Officer, Smt. Gurpreet Kaur GM and Sh. Anand Saxena MD. In the light of all the above facts, it is recommended to file this inquiry against Sh. Rajiv Mathur Project Officer, Smt. Gurpreet Kaur GM and Sh. Anand Saxena MD. If the Government wants, it can seek clarification from the BODS of the bank. Therefore, the charges stand proved to the above extent."

A perusal of the aforesaid report approved by the Director General of State Vigilance Bureau shows that the allegations in question qua embezzlement and/or issues of corruption have been enquired into by the State Vigilance Bureau and that the decision in this regard had been taken by the Board of Directors. The Vigilance Bureau Investigation Report was duly verified by the Director General Vigilance and it was concluded that there was no cognizable criminal offence. The above said report is not a subject matter of challenge. Once an investigation has already been conducted at the highest level and finds no criminality, there is no reason for this Court to disbelieve such report or to direct any fresh investigation into it. While ruling out commission of a criminal offence, the Vigilance had only recommended that comments may be sought from the Board of Directors qua the decision taken by them. The same cannot be interpreted to conclude that the respondents herein had any criminal intent at their end. The matter qua them has been finalized.

It is a well settled principle of law that a report has to be seen as a whole and cannot be read selectively or piece-meal. The recommendation, "If the Govt. wants, it can seek clarification from the Board of Directors of the Bank," cannot over-ride a specific finding recording to the following effect:-

"In this entire investigation, no such fact has come out that expresses any criminal mindset on the part of Sh.Rajiv Mathur, Project Officer, Smt. Gurpreet Kaur, General Manager and Sh. Anand Saxena, M.D. In the light of all the above facts, it is recommended to file this enquiry against Sh.Rajiv Mathur, Project Officer, Smt. Gurpreet Kaur, General Manager and Sh. Anand Saxena, M.D.

The general recommendation against BOD would not lay ground to re-open the case against the respondents who have already faced vigilance enquiry as well as departmental action and none of which, their criminal involvement has been noticed.

It is evident from a perusal of the reply filed by the respondent that a regular departmental enquiry was also conducted by the Department and the report was submitted to the Staff Sub-Committee headed by Principal Secretary, Cooperative Department and also the Chairman of the Harco Bank. Only an advisory note was issued to the Project Officer and the General Manager and the Govt. absolved the M.D. of all the charges. Hence, the Departmental proceedings have culminated up to the Highest level i.e. the Principal Secretary, Department of Cooperative. The Registrar Cooperative Societies being an authority subordinate to the Principal Secretary cannot re-examine such decision and such action can only be confined to the Board of Directors alone, as per the recommendation of Vigilance and its scope cannot extend any further.

Any communication qua the said aspect cannot be cited to re-open concluded proceedings qua the private respondents herein, more-so when none of the final orders are under challenge.

The subsequent communication by the Chief Secretary also has to be seen in the context of the recommendation made by the State Vigilance Bureau which has not only ruled out the involvement of the private respondents in any criminal embezzlement or criminal intent but has also upheld the punishment of warning given by the Department to the above said officers. The Director General of Police, State Vigilance Bureau, had recorded his finding after going through the entire enquiry/investigation conducted by the State Vigilance Bureau and the conclusion was based upon consideration of all the material that was brought before the State Vigilance Bureau. The decision which is now pending with the respondent Authorities relates only to the recommendations made by the State Vigilance Bureau against the Board of Directors/Board of Administrators.

The Registrar Cooperative Societies, Haryana, has, however, in its written statement submitted that comments of the officers have already sought for and a decision on the representation dated 23.09.2022 shall be taken immediately on receipt of their comments.

The above said reply is a response to the stage where the representation of the petitioner is pending, which is more of a routine mechanical response, and cannot be perceived that the guilt of the private respondents is yet to be finally determined.

It seems that filing of the present petition is intended to extend a stepping stone to re-open, what has already been closed, and for certain extraneous considerations.

The same leads to the prayer made in the present petition.

In so far as the prayer for recovery of Rs.10 crores as mentioned in the representation (Rs.3.32 crores Principal + Rs.6.76 crores interest) are concerned, such prayer is not tenable as the regular departmental enquiry or the Vigilance has not held them liable for having caused any loss. Rather, it was recorded that the decision was taken to prevent escalation of loss. In financial and banking matters, One

Time Settlement Schemes (OTS) are a regular festive and any waiver of interest under such schemes cannot be labelled as criminal. Fiscal discipline and health of a Financial Institution takes shocks of various other costs and loss of business opportunities. The initial proceedings of the year 2007; 2008 and 2012 of the Board of Administrators cannot be relied any further after the conclusion of Regular Departmental Enquiry and Enquiry by the State Vigilance Bureau which have not found the private respondents guilty of same or directed any recovery. There can be no presumption of loss once the departmental enquiry has been concluded.

The prayer to direct respondents to conduct departmental enquiry is also liable to be rejected since departmental enquiry has already been concluded and the petitioner has chosen not to challenge the same or even to disclose the same in his pleadings. No grounds exist for directing departmental proceedings to be conducted afresh.

The prayer for directing registration of FIR cannot be accepted for the reason that State Vigilance Bureau has also investigated the criminal aspect and concluded that no criminal case is made out. There is hence no material for this Court to direct registration of FIR against private respondents.

In so far as the prayer for directing decision on representations is concerned, the Registrar Cooperative Societies has already said in the reply that he is seized of the matter and comments from the members of the Board of Administrator are awaited. The petitioner has not prayed any relief against the Board of Administrator and has rather read the same against the private respondents herein which cannot be directed. Any such direction would be perceived as validation of the action against private respondents by the High Court. The issue can thus only be examined by the Registrar Cooperative Societies to the extent of recommendation made by the State Vigilance Bureau and not against the private respondents herein. This Court would thus not issue a direction to do indirectly what is not permissible directly.

Taking into consideration that the report was submitted by the State Vigilance Bureau in the year 2020 and the Registrar Cooperative Societies has stated that a decision shall be taken as well, that already a period of more than 03 years has elapsed since then, it is expected that an expeditious decision is taken qua the Board of Administrator/Board of Directors on the representation submitted by the petitioner is decided and preferably within a period of 06 months of the receipt of certified copy of this order.

Petition is accordingly disposed of.

May 26, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No