IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.586 OF 2022

Dr. Shashikant Ramchandra Gangavane ..Petitioner
Vs.
1. State of Maharashtra,
2. Tapi Sahakari Pathpedi Ltd. ..Respondents

Mr.V.D.Sapkal, Senior Advocate i/b. Mr.A.R.Kapadia and Mr.V.B.Kulkani, Advocates for petitioner

Mr.A.R.Kapadia, Addl. Public Prosecutor for respondent no.1

Mr.S.S.Deve, Advocate h/f. Mr.T.R.Daware, Advocate for respondent no.2

CORAM : R.G.AVACHAT AND SANJAY A. DESHMUKH, JJ.
RESERVED ON : DECEMBER 21, 2023
PRONOUNCED ON : JANUARY 03, 2024

ORDER *(PER R.G.AVACHAT, J.)* :-

This Writ Petition has been filed with the following two main reliefs :-

> (c) The Hon'ble Court may kindly issue writ of mandamus and/or any other appropriate writ and/or directions and/or order and thereby quash and set aside the FIR No.2 of 2011 lodged with Chopda Police Station, Taluka Chopda, Dist.Jalgaon under Section 420, 406, 408, 409, 468, 471 120-B read with 34 of Indian Penal Code to the extent of the petitioners.
>
> (cc) That, by issuing appropriate writ or order or direction of like nature this court may please quash and set aside the entire charge sheet filed in connection with First Information Report No.2 of 2011, registered with Chopda Police Station, Tq. Chopda, Dist. Jalgaon and Special Case

No.31 of 2022, registered on the basis of same and pending before the learned District Judge-2 and Additional Sessions Judge, Amalner, Tq. Amalner, Dist. Jalgaon to the extent of present petitioner/accused Dr. Shashikant s/o. Ramchandra Gangavane.

FACTS:-

2. Respondent no.2 – is a co-operative credit society. The FIR has been lodged by one Narayan Gadekar, Auditor of Co-operative Societies. He conducted audit of respondent no.2 – credit society for the period from 01.04.2007 to 31.03.2009. On having audited accounts of the credit society, the informant realised the Chairman, members of the managing committee and borrowers to have indulged into fabricating false documents and sanction of hefty loans with inadequate or without security. The loan amounts have been utilised for the purpose other than for which the loans were sanctioned. Fictitious companies were formed by the relations of the Chairman and members of the managing committee (Directors). Crores of rupees of the credit society have, thus, been siphoned off. The Auditor, therefore, lodged FIR on 03.01.2011, detailing therein various loans transactions and the manner and *modus-operandi* of sanctioning of loans and siphoning of loan amounts. The Auditor, then, gave a supplementary statement, stating therein some other such transactions, which were remained to be mentioned in the FIR.

We do not propose to refer to all the averments in the FIR, since the matter in hand pertains only with one of such transactions.

3. The facts, which are relevant for deciding present Writ Petition, are pertaining to grant of loan of Rs.7.5 Crores to one "Banai Hospital and Research Centre". The loan was granted to its Chairman namely, Dr.Nandkumar Yadavrao Tasgaonkar (borrower). The averments/allegations relating to said loan transaction are as under (reproduced from pleadings):-

> That, while submitting the Loan Requisition Letter to the respondent no.2, the documents submitted to the support of:-
>
> (i) Applicant's annual income to the tune of Rs.14 crores (approx.)
> (ii) Non-agriculture land approx. 35 acres.
> (iii) Buildings of 4 Lakhs square feet (approx).
> (iv) Valuation of land and building – Rs.97,50,00,000/- (approx.)
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> The documents supporting the aforesaid facts were not produced despite the letter demanding the aforesaid documents through R.P.A.D. to the petitioner.
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> 2. That the promissory note dated 10.01.2006 executed wherein the petitioner no.1 and Branch Manager had marked their signatures for the amount of Rs.20 Crores along with interest @ 16% per annum.
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> The said promissory note mentioned above does not contain the information about the person who will be going to perform the transaction.
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> 3. As per the Stamp Receipt dated 10.06.2006 of the Receipt of 20 Crore, it reflects that loan amount of Rs.20 Crores is disbursed however, on perusal of the loan account there is no entry of disbursement of Rs.20 Crores.
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> 4. As per the loan bond dated 10.01.2006 the said bond is used, however, the terms are not followed.
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> On perusal of the agreement to sale it appears that the agreement is in the name of Saraswati Medical and Research

> Foundation and not in the name of Banai Hospital and Research Center/
>
> 5. On perusal of the mortgage deed dated 20.03.2006 it appears that the owner of the land on which charge is created is not in the name of the main borrower not Banai Hospital and Research Center. It is further mentioned that the main borrower has falsely put to the knowledge of the respondent no.2 that he has purchased the land of some farmers.
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> 6. That, on repeated requests, the main borrower failed to give the proof of the existence of the Banai Hospital and Research Center and there was usage of stamp, letter-head for the said loan transaction.
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> 7. It is alleged that from 10.01.2006 to 23.03.2007 the amount which was withdrawn was misappropriate that the account maintained at Dombiwali West branch of the respondent no.2 bearing No.164/4 was in operation from 10.01.2006 to 01.07.2008 thereafter the amount in the said account was transferred to the Dombiwali West Shastrinagar branch to the account bearing no.164/1. The account maintained at Dombiwali West Shastri Nagar Branch was maintained till 30.06.2009 thereafter on 30.06.2009, the account of the petitioner no.1 was transferred to Dombiwali Station Road Branch with account bearing No.164/15. It is alleged that the said transferring of the accounts was intentional to show the account is regular and avoid coercive steps.
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> 8. That the main borrower has not provided the supporting documents of the utilisation of the loan amount.

On investigation, charge sheet has been filed against the present petitioner and the borrower.

4. We have heard learned senior counsel appearing for the petitioner, learned Addl. Public Prosecutor for respondent no.1 – State and learned counsel appearing for respondent no.2 – credit society.

5. A lot has been argued by learned senior counsel appearing for the petitioner. We, however, do not propose to advert to those submissions and scrutinise the material on record because the borrower being not before us, any observations on the merit of the said matter, will either help or prejudice the case of the prosecution. The petitioner before us is the guarantor/surety to the said loan.

6. Learned Addl. Public Prosecutor would submit that the allegations in the FIR/supplementary statement have been supported by the documentary material. The petitioner has signed each and every loan related document. He is, therefore, privy to all those criminal activities. According to him, the loan was obtained for construction of “Banai Hospital”. The loan amount has not been utilised for that purpose. If one would visit the proposed site, one would find the premises for “Banai Hospital” to have not come up. He would further submit that grossly insufficient security was offered. Even if the loan amount has been repaid, the crime, which has been committed, do not gets washed off. He adverted our attention to various loan related documents. According to him, some of the documents were blank. According to learned Addl.

Public Prosecutor, it is, thus, not a case for grant of relief. He would further submit that money of small depositors has been siphoned off. They had to beg for refund of their deposits.

7. Learned counsel for respondent no.2 – credit society would submit that the then Chairman and members of the managing committee of the credit society are no longer in control of the affairs of the credit society. A newly elected body is in control. The credit society has been revived and is now running in profit. Learned counsel impliedly suggested for grant of relief to the petitioner herein.

8. Considered the submissions advanced. Perused the documents relied on.

9. The FIR has been lodged by the Auditor of the Co-operative Credit Societies. There is Saraswati Medical and Research Foundation. The borrower – Dr.Nandkumar Tasgaonkar was head thereof. He preferred an application for loan for construction of hospital, "Banai Hospital", to be established at village Hedutane, Dombivali, Tq. Kalyan, Dist. Thane. A sum of Rs.20 crores was sanctioned towards loan. An amount of Rs.7.5 crores, however, was released. Same is said to have not been utilised for construction of

the hospital. The agricultural land, offered as security for repayment of loan, was grossly inadequate. The land did not stand in the name of the person who executed the deed of mortgage.

10. The petitioner before us is a guarantor to the said loan. At the relevant time, he was serving as Medical Officer with one of the hospitals of Mumbai Municipal Corporation. The petitioner was to retire in August, 2023. By now, he might have retired on superannuation. It is informed that his retiral benefits are withheld due to pendency of present crime. Admittedly, the petitioner is not beneficiary of the loan. True, he signed all the loan related documents. He has to sign those documents since the credit society required those documents under signature of the borrower and the guarantor as well. Although the FIR was lodged in January, 2011, charge sheet has been filed in the year 2022, i.e. after about ten years of registration of the FIR. In the meanwhile, before filing of the charge sheet, the borrower has repaid the entire loan amount with interest at the rate agreed upon. The credit society has issued `no-dues certificate'. It is informed that no charge sheet has yet been filed against the Chairman and officials of the credit society. It is not known, how long it will take.

11. At the cost of repetition, it is observed that the petitioner before use, is not beneficiary of the loan. He is presumed to be at the receiving end. Had the loan not been repaid, his personal properties and even retiral benefits, would have been attached in the proceedings for recovery of the loan amount.

12. A startling fact came to our notice during hearing of this petition. We were informed that the borrower was released on anticipatory bail. What an efficient Investigating Officer one was! Present petitioner was arrested and remained behind the bars for not less than eight months. Be that as it may. We find it to be a fit case to grant the petitioner relief in the interest of justice.

13. In the result, the petition is allowed in terms of prayer clauses (c) and (cc).

[SANJAY A. DESHMUKH, J.] **[R.G. AVACHAT, J.]**

KBP