IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

961 CRIMINAL WRIT PETITION NO. 1001 OF 2021

TYAGA BAPU SHINDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for petitioners : Mr. Pramod S. Gaikwad
APP for the respondent – State : Ms. V.N. Patil-Jadhav
Advocate for respondent no.8 : Mr. K.J. Suryawanshi h/f. Mr. Laxman H. Kawale
...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 22 MARCH 2024

PC :

Heard both the sides.

2. The petitioners are coming with a prayer that in spite of misappropriation having been found in a co-operative society about which already a FIR has been lodged, the respondent no. 5, who is the Joint Registrar of the Co-operative Societies, has not been taking steps pursuant to the ciruclar dated 14-07-2010 which inter alia provides for enquiry into the report submitted by the Special Auditor and more importantly any deliberate attempt to not report something which according to this circular is with an intention to avoid a greater punishment, stated to be covered by section 217 of the Indian Penal Code.

3. The relevant paragraph reads as under :-

> “ *These instances are to be differentiated from mere negligence, though amounting to professional lapse or shortcoming, does not amount to fraudulent reporting consisting of suppression of truth or suggestion of falsehood which either singly or jointly constitute fraud, which is an offence in itself. As such, the following guidelines are issued to take care of fraudulent reporting and not for mere negligence in conducting audit process or reporting the outcome of Audit process.*
>
> *Where fraudulent reporting is observed, it be ascertained whether the concerned professional is prima facie liable under conspiracy along with the other persons who have actually committed the acts of commission and omission while conducting the affairs of society. If that is so, the concerned auditor or person responsible for verification will be liable jointly and severally with the other offenders. However, where the element of conspiracy cannot be substantiated then it should be seen whether the concerned professional, who is also a Public servant while conducting his statutory responsibility, has conducted himself to protect any person from legal punishment or to save any person from punishment or to save any person from punishment of a higher degree and has tried to bring such person under another kind of a higher degree and has tried to bring such person under another kind of punishment which is of a lesser degree. This kind of conduct is covered under Section 217 of Indian Penal Code, 1860 which provides for an offence by a Public Servant disobeying direction of law with intent to save any person from punishment or any property from forfeiture.”*

4. Learned advocate for the petitioners submits that in spite of repeated requests, respondent no. 5 has not been taking any steps pursuant to this circular and directions be issued.

5. Learned advocate for the respondent no. 8 who was Special Auditor, submits that subsequently, the circular in question has been substituted by section 81 of the Maharashtra Co-operative Societies Act, 1860. It contemplates enquiry into the negligence by the

statutory auditor. Already a special audit was directed on specific points since circular dated 14-07-2010 has been superseded by such legislative provision.

6. Having considered the rival submission, it transpires that the circular dated 14-07-2010 contemplates examination by the Registrar, of involvement of a statutory auditor in not reporting something purportedly inviting an action under section 217 of the Indian Penal Code.

7. Perusal of section 81 reveals that though it is a initiative post such circular inter alia expecting the special auditor and also contemplates negligence on the part of the statutory auditor, in our considered view, it does not comprehend a situation where the statutory auditor deliberately does not report something as is expected or contemplated in the afore-mentioned circular, particularly the paragraph reproduced herein-above.

8. In view of such state of affairs, no prejudice would be caused to the respondent no. 8 even if a direction is issued to the respondent no. 5, to undertake an exercise contemplated in circular dated 14-07-2010.

9. Needless to state that it would be always open for the respondent no. 8, if he so intends, or called upon to do so, to appear before the respondent no. 5 and participate in the enquiry.

10. Writ petition is disposed of by directing the respondent no. 5 to undertake exercise in the light of the circular dated 14-07-2010. The exercise shall be done as early as possible and shall be concluded in any case, within six (6) months.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/