



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.543 OF 2023

Sau. Chhaya Anil Sedame, aged about
55 years,, Occ. Service, C/o Anil
Sedame, Flat No. 101, Krushna Apt.
Dhoke Layout, Sunder Biscuit, Koradi
Road, Bhokara, Koradi (NB), Nagpur
441111

... APPLICANT

VERSUS

1. State of Maharashtra, through
Police Station Officer, Police Station,
Ghuggus, Tahsil : Chandrapur,
District Chandrapur
2. Rajaram s/o Tukaram Bhadke, Aged
about 64 years, Major, Occ. Manager,
R/o Sanjay Nagar, Mul Road,
Chandrapur.
3. Chandrapur Zilla Magasvargiya
Nagarik Sahakari Pat Sanstha,
through its Chairman, Shri Vivek
Atmaram Nale, Office at Sanjay
Nagar, Mul Road, Chandrapur.

... NON-APPLICANTS.

Shri P.M. Giratkar, Advocate for the applicant.
Shri A.B. Badar, Addl.PP for the State.
Shri Alok Daga, Advocate for non-applicant nos. 2 and 3.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 08.01.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. By this application the applicant (accused no.2) is seeking to quash the charge-sheet arising out of First Information Report No.176 of 2012 registered with the Ghuggus Police Station, District Chandrapur for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code.

4. At the instance of the FIR lodged by Manager of the Chandrapur Zilla Magasvargiya Nagarik Sahakari Pat Sanstha ('the Society'), crime has been registered. The Audit Report discloses misappropriation which resulted into filing of the FIR by the Manager of the Society. Both learned Counsel would submit that though the charge is framed however yet evidence has not commenced.

5. Learned Counsel for the applicant would primarily urged that in view of the decision of this Court in case of ***Mahadeorao***

Uttamrao Rajurkar and Anr. vs. The State of Maharashtra and Ors. 2020 ALL MR (Cri) 4325, the FIR lodged by any other person than the Auditor in furtherance of Audit Report submitted under Section 81 of the Maharashtra Co-operative Societies Act 1960, is not maintainable.

6. Moreover, reliance is placed on another decision of this Court in case of *Shadir Mohammad s/o Sheikh Rahim Qureshi vs. State of Maharashtra and Ors. (Criminal Application (APL) No.635/2019) dated 14.03.2022*, wherein this Court once-again by relying on the decision in case of *Mahadeorao Uttamrao Rajurkar and Anr. vs. The State of Maharashtra and Ors. (supra)*, reiterated the legal position and turned down the FIR.

7. Besides that non-applicant nos.2 and 3 have appeared through their Counsel and filed a reply stating that they have no objection to quash the FIR. Learned Counsel for the applicant has equally pointed from the police papers that the applicant was attached to the concerned Branch during the period from 01.04.1991 to 25.10.1991 whilst misappropriation was allegedly carried out from November, 1991 onward.

8. Our attention has also drawn to the fact that alleged

misappropriation was to the tune of Rs.9600/-.

9. In view of the above legal position, the proceedings initiated by the employee of the Society cannot be allowed to continued, particularly, when FIR was in pursuance of Audit Report under Section 81 of the Maharashtra Co-operative Societies Act, 1960. Therefore, the following order :

(a) The Criminal Application is allowed.

(b) We hereby quash and set aside the criminal prosecution bearing R.C.C. No.590 of 2014 pending on the file of the Judicial Magistrate First Class, Chandrapur arising out of First Information Report No.176 of 2012 registered with the Ghuggus Police Station, District Chandrapur for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code.

10. The application stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Trupti