IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 593 OF 2019

1. Sharada W/o Ganesh Raut
Age : 40 years, Occ : Agri.,

2. Minesh S/o Baliram Raut
Age : 35 years, Occ : Agri.,

3. Shivaji S/o Kondiba Raut
Age : 60 years, Occ : Agri.,

All R/o Nalwandi, Tq. Beed,
Dist. Beed.

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Police Inspector
Beed City Police Station,
Tq. & Dist. Beed.

2. Mohan S/o Kashinath Todkar
Age : 41 years, Occ : Service,
R/o Hanuman Nagar, MIDC,
Beed, Tq. & Dist. Beed.

3. Amar S/o Nivruti Shinde
Age : Major, Occ : Liquidator,
Champavati Urban Co-operative
Bank Beed
R/o Deputy Registrar, Co-operative Society,
Jalna Road, Beed, Tq. & Dist. Beed.

..RESPONDENTS

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Mr. D.B. Pokale, Advocate for the petitioner.
Mr.S.R. Yadav-Lonikar, APP for the respondent/State.
Mrs. J.P. Reddy h/f Mr. M.P. Gude, Advocate for respondent nos.2 and 3.

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CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.
RESERVED ON : 7th OCTOBER, 2025
PRONOUNCED ON: 17th OCTOBER, 2025

JUDGMENT (PER VAISHALI PATIL-JADHAV, J) :

Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing F.I.R. No.94/2013 registered by respondent no.2 with City Police Station, Beed, Tq. & Dist. Beed, for the offence punishable under Sections 406, 420 read with 34 of the Indian Penal Code and further proceedings in Regular Criminal Case No.580/2014 pending before the learned Chief Judicial Magistrate at Beed.

3. The Liquidator of Champavati Urban Co-operative Bank Ltd., Beed, having its head office at Basheer Ganj, Beed authorized respondent no.2, Cashier/Accountant of the said bank to lodge criminal cases against the defaulting borrowers and guarantors of proprietary firm namely Shri Sangameshwar Ginning Industries, Nalwandi, Tq. & Dist.Beed

of which petitioner nos.1 and 2 are the proprietors. Petitioner no.3 is guarantor of the loan availed by petitioner nos.1 and 2. In short, it is alleged in the FIR that Champavati Urban Co-operative Bank Ltd., is a Co-operative institution/bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The area of operation of the Bank was in Beed district. The elected Board of Directors was looking after the business of the bank. Due to the complaints received regarding the irregularities and mis-management in the affairs of the bank, the Government of Maharashtra by order dated 30.01.2019 superseded the Managing Board and appointed the Administrative Committee. Thereafter, the banking licence was cancelled on 20.03.2010 and the Board of Liquidator was appointed on the bank on 23.03.2010.

4. The petitioners have availed the cash credit loan facility from the bank. Under the supervision of Board of Liquidator the loan documents were verified and it was noticed that, right from beginning the petitioners had dishonest intention of not repaying the loan. For obtaining unlawful financial gain, the petitioners have completed loan formalities by using sham documents and have violated the

terms and conditions of grant of loan. They have completed the formality of executing loan documents with dishonest intention and violated the terms and conditions of loan. It is further alleged that the cash credit loan of Rs.40,00,000/- was sanctioned to the petitioners on 31.07.2004 on condition of repayment within one year. The petitioner no.3 and one Shriram Ganpati Kale were guarantors to the said loan facility. The petitioners have deliberately not repaid the loan. Hence they have committed offence of criminal breach of trust and cheating against the said bank.

5. Heard learned Advocate for the petitioners, learned APP for the respondent no.1/State and learned Advocate for respondent nos.2 and 3.

6. Learned Advocate for the petitioners submits that petitioner nos.1 and 2 as proprietors of Shri Sangameshwar Ginning Industries, Nalwandi had applied Champavati Urban Co-operative Bank Ltd., Beed for cash credit of Rs.50,00,000/- and the bank sanctioned cash credit of Rs.40,00,000/-. The present petitioners executed the necessary documents towards

security of the said loan. The petitioners repaid some amount by depositing Rs.5,85,000/- till 10.11.2008, however, due to the financial problems, the petitioners could not repay the loan and hence the bank declared the petitioners as defaulters on 03.12.2008. Thereafter, the bank had initiated the proceedings under Section 101 of the M.C.S. Act before the District Deputy Registrar, vide Application No.383/2009 and obtained the recovery certificate, for Rs.43,56,156/- on 31.10.2010. After obtaining the recovery certificate, the bank has created charge on the mortgaged property. Though, civil proceedings were initiated and actions under the same were also taken still the present F.I.R. was registered by respondent no.2 on the directions of the Liquidator of the bank.

Learned Advocate submits that the F.I.R. reveals that the transaction between the bank and petitioners is contractual and they are of purely civil nature and hence, no criminal case is made out against the petitioners. Only with a view to pressurize the petitioners for repayment of dues, the present crime is registered, and hence the F.I.R. and the criminal proceedings against the petitioners are liable to be quashed and set aside.

7. Per-contra, learned Advocate for respondent nos.2 and 3 and learned APP strenuously opposed the petition stating that the offence under Sections 420 and 406 of the Indian Penal Code is made out against the petitioners and there is sufficient material on record showing the intention of cheating since inception the petitioners have violated the terms and conditions of loan agreement and have committed criminal breach of trust.

8. With the assistance of learned advocate for the petitioners, learned APP for the State and learned advocate for respondent nos.2 and 3, we have perused the petition, documents annexed with the same and the charge-sheet.

9. Admittedly, the petitioners have obtained cash credit facility from the bank by executing necessary loan documents. They have mortgaged their immovable property by way of security. Thus, the transaction between petitioners and bank is a purely commercial transaction and no criminal element is made out from it.

10. The recovery proceedings filed by respondent no.2 under Section 101 of the M.C.S. Act supports the contention of the petitioners that the dispute is of purely civil nature. Reading of F.I.R. as it is, without adding or subtracting, do not make out ingredients of Sections 420 and 406 of the I.P.C. against the petitioners.

11. The allegations made in the FIR and material collected during the investigation, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out any case against the petitioners.

12. Perusal of the F.I.R. and the material collected during the investigation is bereft of even basic facts which are absolutely necessary for making out ingredients of offence under Sections 406, 420 read with 34 of the IPC against the petitioners. To make out a case for criminal breach of trust punishable under Section 406 of IPC, the essential ingredients which are required to be made out are; a) entrustment of property with a person (petitioners), b) the person so

entrusted, dishonestly misappropriated or coverts the property to his own use or dishonestly using or disposing of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged.

Even if the case of the 2nd respondent is accepted as it is, then also no ingredients of criminal breach of trust are made out against the petitioners in the FIR or in the charge sheet.

13. The criminal prosecution lodged against the petitioners appears to be manifestly attended with malafide and same is instituted with an ulterior motive with a view to pressurize petitioners for repayment of loan. We are of the view that petitioners' case falls under following categories of ***State of Haryana and others Vs. Bhajan Lal and others, 1992 SC (Cri) 426 :***

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

14. Merely because the petitioners failed to repay the loan, that itself does not invite any criminal liability. Obviously, purely civil dispute is converted into criminal offence so as to pressurize the petitioners to repay the loan. The continuation of prosecution against the petitioners is therefore abuse of process of law and Court.

15. For the aforestated reasons, we pass the following order :

ORDER

(i) The petition is allowed.

(ii) The proceedings in Regular Criminal Case No.580/2014 pending before the learned Chief Judicial Magistrate, Beed, arising out of First Information Report vide Crime No.94/2013, dated 07.08.2013 registered with Beed City Police Station, Tq. & Dist. Beed for the offences punishable under Sections 420, 406 read with Section 34 of the Indian

Penal Code along with charge sheet, are hereby quashed and set aside.

(iii) Rule is made absolute in above terms.

(VAISHALI PATIL-JADHAV, J) **(NITIN B. SURYAWANSHI, J)**

sga/2025