IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRIMINAL APPLICATION NO.1605 OF 2023

Sadashiv Jaywant Farande,
Age 41 yrs., Occ. Service,
(Branch Manager, Parner Taluka
Sainik Sahakari Bank Ltd. Karjat)
R/o Bhandewadi, Tq. Karjat,
Dist. Ahmednagar.

… **Applicant**

… **Versus** …

1 The State of Maharashtra
Through Investigating Officer,
Police Station, Karjat,
Tq. Karjat, Dist. Ahmednagar.

2 Sunil Yashwant Ugale,
Age 52 yrs., Occ. Service (Awwal Karkoon),
R/o C/o Tahsil Office, Karjat,
Tq. Karjat, Dist. Ahmednagar.

… **Respondents**

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Mr. N.B. Narwade, Advocate for applicant

Mr. S.A. Gaikwad, APP for respondents

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CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 14th JANUARY, 2025

<u>ORDER</u> : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashing the proceedings in Regular Criminal Case No.561/2021 pending before learned Judicial Magistrate First Class, Karjat, Tq. Karjat, Dist. Ahmednagar arising out of First Information Report vide Crime No.1086/2020 dated 24.11.2020 registered with Police Station, Karjat, Tq. Karjat, Dist. Ahmednagar, for the offence punishable under Sections 409, 406, 420 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. N.B. Narwade for applicant and learned APP Mr. S.A. Gaikwad for respondents. With the help of learned Advocate for applicant and learned APP for respondents we have gone through First Information Report and entire charge sheet.

3 Learned Advocate for applicant has submitted that in similar complaint when First Information Report vide Crime No.440/2019 was registered with the same Police Station and charge sheet vide Regular Criminal Case No.99/2020 was pending before learned Judicial Magistrate First Class, Karjat for the offence punishable under Section 406, 409 read with Section 34 of the Indian Penal Code, he had approached this Court under Section 482 of the Code of Criminal Procedure by filing Criminal

Application No.1136/2020. This Court after considering the entire material observed that the entire material does not disclose criminal breach of trust as defined under Section 406 of the Indian Penal Code and, therefore, the entire proceedings were quashed and set aside. In that proceedings, in fact, the applicant himself was the informant, but later on he was made as accused. Now, respondent No.2, who is serving as Awwal Karkoon in Tahsil Office has lodged the report. There is a scheme by name 'Indira Gandhi Yojana', which is in respect of pension to be granted to old people. Under the said scheme the account of the beneficiary should be in the bank. The present applicant is the Manager of Parner Taluka Sainik Sahakari Bank, Branch at Karjat. It is then stated that present applicant by misusing his post gave the name of his father as the beneficiary. When the father was not entitled to receive the benefit, has taken the amount, so also in respect of other persons though they were not entitled to, accounts were opened in their names and amount from the Government has been taken and it is utilized and misappropriated to the extent of Rs.1,72,800/-. The documents on record would show that the father of present applicant had made the application under the said scheme by saying that present applicant and his wife are not looking after him. Under the said circumstance, the father was entitled to receive the amount. At a later point of time, it appears from the record that his father gave up that he should not be considered for the benefit under the scheme as now the applicant and his wife are looking after him. It was the voluntary act on the part of his father. There was no question of cheating anybody and misappropriating any amount. It would be unjust to ask the applicant to face the trial.

4 Per contra, learned APP strongly opposed the application and submitted that every document has been collected by Investigating Officer which would show that father of applicant was not entitled to get benefit under the scheme which was Rs.600/- per month, so also in respect of one Sangita Tanaji Choudhari. She was not entitled to receive the benefit; yet, amount was credited to her savings account. In the capacity as Manager of the concerned bank the present applicant was responsible for monitoring the proper distribution of the amount. Now, the misappropriation and cheating is in the name of father itself. It was the duty of applicant to look after his father, but it has been so pretended that he is not looking after and then the amount has been taken. But it appears that when it was realized that it cannot be taken further, it appears that the father of applicant has given it in writing. Everything has been done conveniently. Inquiry was made and such documents have been collected. Therefore, this is not a fit case where this Court should exercise its inherent powers.

5 We are in agreement with learned APP. Being the Manager of the bank, to whom the particular work has been given i.e. regarding distribution of amount under the scheme, the applicant ought to have been vigilant. Though in another matter he himself had lodged the First Information Report wherein he blames co-accused for the misappropriation, later on, it appears that he was made accused. This Court has quashed and set aside the proceedings against applicant, but the facts are different. Here, though it is also under the same scheme; yet, it is in respect of different beneficiaries and one of them is father of present applicant himself. The revenue authority has then stated that his father was not eligible to get benefit under the scheme; yet, his account has been opened in the same bank where the son is serving as Manager. The scheme *prima facie* does not appear to nominate the bank and the branch of applicant as the only bank, in which the beneficiaries can open the account to receive the amount under the scheme. Therefore, whether it was mere a co-incident that the father would have opened the account for getting the amount under the scheme in that bank, is a question ? Further, the application which was presented by father states that as he has not been looked after by the son and the daughter-in-law, he is helpless. It is then the sorry state of affairs that the son who is Bank Manager is not looking after the father and now the son is taking advantage of the situation. Further, after receiving certain installments, father is coming with an

application that now his son is looking after him. Therefore, father should not be considered as a beneficiary. Whether a coincidence once again will have to be then looked after, which can be done only in the trial. It is not only the father but also in respect of other persons it is stated that accounts in their names were opened though they were not entitled to receive the benefits under the scheme. Therefore, when there is *prima facie* case, this cannot be taken as a fit case where this Court should exercise powers under Section 482 of the Code of Criminal Procedure for quashing the proceedings. Application stands rejected.

(ROHIT W. JOSHI, J.) **(SMT. VIBHA KANKANWADI, J.)**

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