



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

39 CRIMINAL WRIT PETITION NO. 1350 OF 2024

**RADHAKISAN GANPAT ATHARE
VERSUS
THE STATE OF MAHARASHTRA**

....
Mr. Tushar Shinde, Advocate h/f Mr. C. K. Shinde, Advocate for
Petitioner

Ms A. S. Deshmukh, APP for the Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.01.2025

PER COURT :-

1. Heard the learned counsel for the Petitioner at length.

The learned APP waives notice on behalf of the Respondent.

2. Having regard to the submissions canvassed on behalf
of both the sides, I have gone through the record.

3. By the present Petition, the Petitioner has questioned
the legality and validity of the order dated 06.09.2023 passed by
the learned Additional Sessions Judge, Ahmednagar in Criminal
Revision Petition No. 27 of 2022, thereby affirmed the order dated

28.03.2022, passed by the learned Judicial Magistrate First Class, Pathardi below Exh. 33 in R.C.C. No. 188 of 2013.

4. In nutshell the facts which gives rise to the present Petition are that, on 22.01.2023, Shri Shashikant Sukhdeo Thorat, the informant/Auditor of the co operative society Department lodged a report alleging that, on 18.02.2012, he examined the Accounts of Dhawalkranti Gramin Bigar Sheti Sahakari Pathsanstha Limited, Parewadi Tisgaon, w.e.f. 01.04.2006 to 31.03.2011. During the course of the audit, it is found that the Secretary/ Manager Shri Sandip Annasaheb Narwade (Accused No.1) has misappropriated the fund of the Society which has caused loss to the society. On the basis of said report, Crime No. 13 of 2013 was came to be registered with Pathardi Police Station, District Ahmednagar, for the offence punishable under Section 420, 467, 468, 471, 34 of Indian Penal Code, 1860 (for brevity herein after to be refferd as "I.P.C.").

5. During course of investigation, the Investigating Officer recorded the statements of the witnesses including the statements of (i) Shri Atmaram Kondiba Wandhekar, (ii) Shri Bansi Rambhau Lawande, (iii) Shri Jagannath Kanhu Wandhekar, (iv) Smt. Radhabai

Jagannath Wandhekar, (v) Smt. Sindhubai Navnath Wandhekar, (vi) Shri Raosaheb Pandharinath Wandhekar, (vii) Ambadas Bhau Mhaske and others. After investigation is completed, the Investigating Officer has filed the charge-sheet against the present Petitioner and the accused No.1/Sandip Annasaheb Narwade, for the offence punishable under Section 420, 467, 468, 471, 34 of I.P.C.

6. On perusal of statements of the witnesses, it *prima-facie* appears that, the present Petitioner/original accused No. 2 was the Chairman of '*Dhawalkranti Gramin Bigar Sheti Sahakari Pathsanstha Limited*', Parewadi Tisgaon. The petitioner/Accused No. 2 has instigated the depositors to deposit certain amount with the Society, but no receipts were issued to them. So also, the present Petitioner/accused had start Purushottam Dairy and distributed loan to the milk producers. Further the present Petitioner/accused is involved in misappropriating the fund of the society.

7. After filing of the charge-sheet, the present Petitioner filed an application Exh. 33, seeking his discharge. On 28.03.2022, the learned Judicial Magistrate First Class, Pathardi, passed an order and thereby rejected the said application by holding that, the material

produced along with the charge-sheet, are sufficient to frame the charge against the present Petitioner/accused.

8. Being aggrieved by the said order, the Petitioner filed Criminal Revision Application No. 57 of 2022 before the learned Sessions Judge, Ahmednagar. On 06.09.2023, the learned Sessions Judge, passed the impugned order and upheld the order dated 28.03.2022, passed by the learned Judicial Magistrate First Class, Pathardi, below Exh. 33 in R.C.C. No. 188 of 2013.

9. On perusal of the impugned order it *prima-facie* appears that, the Petitioner/accused collected the huge deposits from various customers and availed 2% of discount as one time settlement. The material placed on record are sufficient to *prima facie* shows that, the Tahsildar, Pathardi received numbers of complaints from the various depositors about misappropriation public fund and causing financial loss to the Society by misusing the powers of Board of Director of the society.

10. Needless to say that, defence of the accused cannot be considered while framing the charge. As per the audit report, there are financial irregularities and misappropriation of the public fund.

The present Petitioner impleaded as one of the accused for misappropriation of the public fund. Therefore, the material placed on record is sufficient to frame charge as against the accused.

Section 239 of Cr.P.C. provides as under:-

“239. When accused shall be discharged. - If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

11. Since, the Investigation officer collected sufficient material and produced the same in charge-sheet, on perusal of same they are sufficient to frame the charge against the present Petitioner. Therefore, I do not find any substantial ground to interfere with the findings recorded by both the Courts below. Therefore, the Writ Petition is dismissed at threshold.

[Y. G. KHOBRADE, J.]

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