2025:BHC-AUG:14402-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRIMINAL APPLICATION NO.4531 OF 2023

Mr. Arun K. Burad,
Age 66 yrs., Occ. Chartered Accountant,
R/o C – 201, Nayantara City 1,
Behind Durvankur Lawns,
Bajirao Nagar, Nashik – 422 002.

… Applicant

… **Versus** …

1 The State of Maharashtra
Through City Police Station,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

2 Mr. Rajendra Fakira Nikam,
Age 55 yrs., Occ. District Special Auditor
Class – I, Co-operative Society,
Ahmednagar.
R/o Office at 3rd Floor, Building of
Zilla Parishad Karmachari Sevak
Co-operative Society, Tilak Road,
Ahmednagar.

… Respondents

...

Mr. Saurabh Raut, Advocate h/f Mr. A.A. Fulfagar, Advocate for applicant

Mr. R.P. Gour, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 07th APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashment of First Information Report vide Crime No.740/2023 dated 19.08.2023 registered with City Police Station, Sangamner, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Sections 408, 409, 420, 465, 467, 471, 477-A read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2 Heard learned Advocate Mr. Saurabh Raut holding for learned Advocate Mr. A.A. Fulfagar for applicant and learned APP Mrs. R.P. Gour for respondent Nos.1 and 2. Perused First Information Report and charge sheet.

3 Learned Advocate appearing for applicant vehemently submits that charge sheet has been filed on 08.11.2023 against these accused persons, however, in the same it is stated that against 15 accused including the applicant charge sheet is not filed. However, applicant's name has been certainly stated as an accused and, therefore, present application has been filed.

4 The allegations in First Information Report which is lodged by

District Special Auditor would show that when the re-audit has been made for the period 01.04.2016 to 31.03.2021 on the orders issued by District Sub Registrar, Co-operatives, Ahmednagar, it was found that there is misappropriation of Rs.80,89,41,981/- in Dudhganga Nagari Sahakari Patsanstha Marhyadit, Sangamner, Dist. Ahmednagar. Present applicant is a Chartered Accountant by profession. His role was limited to audit the accounts. Mainly he has relied on the documents supplied by the institute. There is no question of any conspiration or common intention as alleged. The yearly audit that was conducted was never objected by anybody, especially the members who were having financial interest. The audit classification of the institute was in 'A' category. In fact, there was a post of Chief Accountant. There used to be even internal audit. As per the provisions of Co-operative Credit Society, there used to be periodical statutory audit and it was also never objected or any otherwise situation was not noted. Present applicant's role was never in the internal functioning of the society and, therefore, when there is no role which would attract any penal consequences can be attributed to the applicant he cannot be allowed to face the trial.

5 Learned Advocate for applicant has also submitted that District Deputy Registrar exercising his authority under Section 81(6) of the

Maharashtra Co-operative Societies Act, 1960 had directed the informant to re-audit the book of accounts of Society. In fact, the District Deputy Registrar, Sangamner had conducted an inspection in pursuance of Section 89-A of the Maharashtra Co-operative Societies Act and had submitted a statutory inspection report for the year 2020-2021. Said report had also unambiguously stated that there is no misappropriation or embezzlement of the funds. The applicant being an external auditor was required to rely upon the data provided by the Co-operative Society along with sampling process adopted by the Auditor. At the most, as against the applicant there can be a negligence, but not a criminal negligence. Learned Advocate for applicant also points out that offence under Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act will not be applicable against the present applicant. The applicant has adopted the proper procedure or a standard procedure as per the procedure established by law as well as the Institute of Chartered Accountants of India. If such steps are then taken i.e. involving even the Chartered Accountant in such way, then professionals would be hesitant to accept the responsibilities of auditing such kind of accounts.

6 Learned Advocate for the applicant relies on the decisions in **State of Karnataka vs. M. Devendrappa and another** [(2002) 3 SCC 89],

Vineet Kumar and others vs. State of Uttar Pradesh and others [(2017) 13 SCC 369], **State of Haryana and others vs. Bhajan Lal and others** [1992 Supp. (1) SCC 335] and **Rajiv Thapar and others vs. Madan Lal Kapoor** [(2013) 3 SCC 330]. He submits that in these decisions Hon'ble Supreme Court has laid the principles on which this Court can exercise its powers under Section 482 of the Code of Criminal Procedure. We would like to refer these citations at a later point of time.

7 Learned APP strongly opposes the application and submits that the investigation is not yet complete and the charge sheet itself states that charge sheet is yet to be filed as against present applicant. However, from whatever the investigation has been carried up till now, it can be stated that present applicant's role as a Chartered Accountant has been considered. He has audited the accounts of Society for the year 2016-2017, 2017-2018, 2019-2020 and 2020-2021. Substantial amount has been charged as fee for carrying out the audit. For the re-audit carried out by the informant all the documents and record has been considered. The said audit is part of the charge sheet. The misappropriated amount during the audited period has also been bifurcated and it shows that in 2016-2017 the amount that was misappropriated is 25,58,37,708/-, in 2017-2018 it was Rs.1,50,88,440/-, in 2019-2020 it was Rs.2,17,77,274/- and in 2020-2021 it was

Rs.28,41,68,581/-. These amounts are then attributable to the period in which the present applicant had audited the accounts. It cannot be limited to the professional conduct. There are statements of witnesses of various categories. The members who had kept the deposit have stated that their deposits were not returned after the due date or after they were asked to be returned by the depositors. The members had made agitations when their amount was not returned. The directors had distributed the loan in crores of rupees to their own family members and this could have been definitely seen by the Chartered Accountant. Taking into consideration the allegations and the scope of inquiry and public money involved, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure should be exercised.

8 At the outset, we would like to say that in the charge sheet, which is filed on 08.11.2023, copy of which is made available, it is clearly stated that as against present applicant the charge sheet is not filed. His name is in the list of those accused persons against whom charge sheet is not filed. That means, the investigation is still in progress as against the applicant. Only on the basis of charge sheet, which is now against the other accused persons, we will have to consider as to what is the role that is tried to be attributed to the applicant. As per First Information Report,

misappropriation by accused persons (other than Cashiers and Auditors) is to the tune of Rs.80,89,41,981/-. It is stated that present applicant and other five persons i.e. Cashiers and another Chartered Accountant have helped main accused. Now, this help is stated to be in the nature of not disclosing the misappropriation which could have been noticed during the period of audit they had respectively carried. If we consider the report regarding re-audit, after the District Sub Registrar had given directions, it is specifically mentioned, as aforesaid, for which period the present applicant had carried out the audit and which amounts he ought to have noticed, but has not noticed during each year. Certainly, public money is involved in the matter. There are statements of members/depositors which would show that they had deposited their hard earned money just to get some benefit in the form of interest, but in spite of maturity the amount was not returned to them and it is stated that by forging their signatures the re-investment has been shown in their name and a huge amount of loan has been shown to be distributed to the relatives of Directors. Definitely, the provisions under the MPID Act are stated to be applicable as against them and it cannot be against the present applicant. Not disclosing the true state of affair of the financial institution by the Auditor to the members or by way of report has been stated to be cheating as against them. Non disclosure is then also required to be taken note of. Certainly, at the time of framing of charge the Special Designated

Court would take note of under which Section the offence has been made out and charges required to be framed, which cannot be gone into, at this stage. But, certainly, even on the basis of charge sheet which is filed against co-accused there appears to be *prima facie* evidence or there is a possibility of evidence that would be revealed in the further investigation and, therefore, we do not find this to be a fit case to exercise our powers under Section 482 of the Code of Criminal Procedure.

9 Even we want to rely on the observations in the decisions relied by learned Advocate for the applicant. In **M. Devendrappa** (supra) following are the observations -

> "While exercising powers under the Section 482 of the Code of Criminal Procedure, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse.
>
> It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought

to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it be an instrument in the hands of private complainant as unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution."

It is further observed that -

"High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material."

Here also the facts are not complete and those are hazy at this stage.

9.1 In **Vineet Kumar** (supra) it has been observed that -

"Inherent power given to the High Court under Section 482 of the Code of Criminal Procedure is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with *mala fide* and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure to quash the proceeding. The present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 of the Code of Criminal Procedure and quashed the criminal proceedings."

In **Vineet Kumar** (supra) reliance was placed on **Bhajan Lal** (supra).

9.2 In **Rajiv Thapar** (supra) it has been observed that -

"The discretion vested in the High Court under Section 482 Cr.P.C. can be exercised *suo motu* to prevent the abuse of process of court, and/or to secure the ends of justice. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. Where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held."

10 Therefore, taking into consideration the above decisions itself and for the reasons stated above, we take this to be not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Application, therefore, stands rejected.

(SANJAY A. DESHMUKH, J.) **(SMT. VIBHA KANKANWADI, J.)**

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