IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

WRIT PETITION NO.9726 OF 2022

Mansing Co-operative Bank Limited, Dudhondi,
Tal. Palus, District Sangli,
Through its Authorized Officers
Shri. Vikas Nivas Kadam
Age: 44, Occu. Branch Manager,
R/o. Dudhondi, Tal. Palus,
District – Sangli. ..Petitioner

Versus

1. Pramod Hanamant Mithari,
Age. 45, Occu. Agriculture,
R/o. Burli, Tal. Palus,
District-Sangili-416308.

2. Prakash Hanamant Mithari,
Age. 41, Occu. Agriculture,
R/o. Burli, Tal. Palus,
District-Sangili-416308.

3. The Commissioner of Co-operation
And Registrar Co-operative Societies, Pune.

4. The Divisional Joint Registrar,
Co-operative Societies, Kolhapur Division,
Kolhapur.

5. Police Inspector,
Palus Police Station,
Tal. Palus, District-Sangli. ..Respondents

…

Mr. Umesh Mankapure a/w Mr. Parth Pitambare, Advocate for Petitioner.
Mr. Sanjay D. Rayrikar, AGP for Respondent Nos.3 to 5.
Mr. Kuldeep U. Nikam, Advocate for Respondent Nos.1 and 2.

…

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 11th SEPTEMBER, 2025.
PRONOUNCED ON : 18th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.

2. The petitioner impugns order dated 30.03.2022 passed by respondent no.4 i.e. Divisional Joint Registrar, Co-operative Societies, Kolhapur on application filed by petitioner under Section 148 of Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity hereinafter referred as 'MCS Act, 1960') refusing sanction for prosecution against respondent nos.1 and 2.

3. The petitioner is registered Co-operative Society under MCS Act, 1960, who sanctioned loan of Rs.40,00,000/- in favour of respondent nos.1 and 2. Since they defaulted in payment of loan, proceeding for recovery was initiated. Eventually, Certificate dated 08.11.2019 under Section 101 of MCS Act, 1960 is issued in favour of petitioner. According to petitioner, respondent nos.1 and 2 had executed registered mortgage deed of land Gut No.341/3/B admeasuring 40R situated at Village Anagdhal towards security of loan. However, they transferred mortgaged property and created third party interest without consent of petitioner-Bank. On 10.05.2021, petitioner filed complaint for offences punishable under Sections 420, 467, 468, 409 r/w. 34 of Indian Penal Code against respondents requesting Police Station Officer, Palus for registration of offence. However, on 21.07.2021, concerned Police Station Officer communicated that in

terms of Sections 146 and 147 of MCS Act, 1960, in absence of previous sanction under Section 148 of MCS Act, 1960, cognizance of complaint cannot be taken. Eventually, petitioner-Bank preferred an application under Section 148 of MCS Act, 1960 before respondent no.3, which was relegated to learned Divisional Joint Registrar for decision, who pleased to reject application vide impugned order dated 30.03.2022.

4. Mr. Umesh Mankapure, learned Advocate appearing for petitioner vehemently submits that respondent nos.1 and 2 have sold out mortgaged property without consent of petitioner-Bank with intention to defraud and cheat, which is offence under provisions of Indian Penal Code as well as MCS Act, 1960. The petitioner-Bank had approached concerned Police Station and filed complaint for registration of offence. However, concerned Police Station Officer refused to entertain said complaint for want of sanction under Section 148 of MCS Act, 1960. The respondent no.3 declined to sanction permission for erroneous reasons. The observation of learned Divisional Joint Registrar that mortgage in respect of land Gut No.341/3/B was not continued for subsequent loans obtained by respondents is erroneous. He would, therefore, urge that impugned order deserves to be quashed and set aside and further directions needs to be given for grant of sanction for prosecution.

5. The learned Advocate appearing for respondent nos.1 and 2, however, opposes Writ Petition on ground that there was no continuation of mortgage after closure of earlier loans of 2014, for security of which mortgage was executed. The learned Advocate endeavours to point out that in pursuance to mortgage, no entry was taken in record of rights that itself is sufficient to hold that property in question was never mortgaged against security of loan.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, limited issue that arises for consideration in this Writ Petition is whether respondent no.4 was justified in refusing grant of sanction to prosecute respondent nos.1 and 2. Perusal of record shows that respondent nos.1 and 2 had applied for sanction of loan of Rs.40,00,000/- to petitioner-Bank. The loan application itself shows that land Gut No.341/3/B admeasuring 40 R was indicated as security against loan. The registered mortgage deed prescribes particulars of property mortgaged, wherein there is reference of land Gut No.341/3/B situated at Village Anagdhal. The respondent nos.1 ans 2 did not dispute execution of aforesaid mortgage deed, although they are trying to contend that property at Anagdhal was not intended to be mortgaged. Plain reading of mortgage deed shows that such contention is fallacious.

7. The impugned order records reason that first loan was sanctioned for C.C. Account No.132 for period from 01.12.2014 to

01.12.2015. In pursuance to such loan, registered mortgage dated 24.11.2014 was executed by respondent nos.1 and 2. However, same was not continued for subsequent loans for period from 31.03.2016 to 31.03.2017 and onward. The last loan was sanctioned on 31.03.2018 and that subsists, but there is no document depicting continuation of mortgage against said loan.

8. The scheme under Chapter XII of MCS Act, 1960 prescribes for offence and penalty under said Act. Section 146 prescribes various offences under Act. Clause (n) of Section 146 states as under:

> *"a member of a society fraudulently disposes of property over which society has a prior claim, or a member or officer or employee or any person disposes of his property by sale, transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society."*

9. Section 147 provides for punishment for offence under Clause (n), which is imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both. Section 148 contemplates for cognizance of offence punishable under Section 147 with stipulation that no prosecution under this Act shall be lodged, except with previous sanction of Registrar.

10. The aforesaid Scheme indicates that offence under Section 146(n) of MCS Act, 1960 would be distinct and independent of offence under Indian Penal Code. The Society had initially made application to Police Station Officer, who erroneously refused to entertain complaint

under pretext of requirement under Section 148 of MCS Act, 1960. Such sanction was not necessary when complaint was regarding offences under Indian Penal Code. However, for prosecution of offence punishable under Section 147 of MCS Act, 1960, such sanction is necessary.

11. Perusal of impugned order indicates that respondent no.4 ventured into detail enquiry, when he was expected to form *prima facie* opinion that material placed before him was sufficient or not for initiation of prosecution of offence under MCS Act, 1960. In wake of registered mortgage indicating that respondent nos.1 and 2 obtained loan and mortgaged property towards security of loan, learned Registrar could not have ventured into details as to whether mortgage was continued as security for loans for subsequent period. The respondent nos.1 and 2 could not demonstrate that they had made independent application for loan obtained during period from 31.03.2016 to 31.03.2018. *Prima facie*, it appears that, similar amount of loan was obtained by respondent nos.1 and 2 and same was carried forward under different account. The mortgage was never discharged. The validity of mortgage deed is 10 years. Therefore, whether continuation of mortgaged was required or not against loan or whether respondent nos.1 and 2 had obtained independent loan after clearing dues of earlier loans would be question for trial.

12. The documents on record clearly states that during subsistence of mortgage of property with Bank, respondent nos.1 and 2 alienated mortgaged property and created third party interest. Once aforesaid requirements are discernible from record tendered before respondent no.4, there was no reason to refuse sanction in terms of Section 148 of MCS Act, 1960.

13. In result, Writ Petition is allowed in terms of prayer Clause (a).

14. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025