IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1320 OF 2024

Rangrao s/o Sonbaji Panpate,
Age : 74 Years,
Occupation : Retired Government Servant,
R/o 41-A, Jagruti Colony, near NIT
Garden, Katol Road,
Nagpur – 440013. **..... APPLICANT**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station Sadar,
District Nagpur.

2. Laxman Ramji Burade,
Aged about 68 Years,
Occupation : Nil,
R/o. House No.426,
Phule lane, behind Ram Bhandar,
Badkas Chowk, Mahal,
Nagpur – 440008. **....NON-APPLICANTS**

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Mr. Parvez Mirza, Counsel for the applicant.
Mr. K. R. Lule, APP for non-applicant No.1/State.
Ms. S. W. Deshpande, Counsel for non-applicant No.2.

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WITH

CRIMINAL APPLICATION (APL) NO.1314 OF 2024

Shri Prakash s/o Nilkanth Chandrayan,
Age : 70 Years,
Occupation: Retired Government Servant,
R/o. Plot No.16, Mehar Apartment,
Naik Layout, Subhash Nagar,
Nagpur – 440022. **..... APPLICANT**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,

Police Station Sadar,
District Nagpur.

2. Laxman Ramji Burade,
Aged about 68 Years,
Occupation : Nil,
R/o. House No.426,
Phule lane, behind Ram Bhandar,
Badkas Chowk, Mahal,
Nagpur – 440008. **....NON-APPLICANTS**

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Mr. Parvez Mirza, Counsel for the applicants.
Mr. K. R. Lule, APP for non-applicant No.1/State.
Ms. S. W. Deshpande, Counsel for non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 09.09.2025
PRONOUNCED ON : 29.09.2025

JUDGMENT : (PER: URMILA JOSHI-PHALKE, J.)

1. Both the applications are filed by the applicants for quashing of the FIR in connection with Crime No.257/2008 dated 30.09.2008 and charge sheet No.122/2009 bearing RCC No.3257/2009 pending before the 19th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur.

2. As per the contention of the applicant namely, Rangrao s/o Sonbaji Panpate in Criminal Application (APL) No.1320/2024, joined as a Storekeeper in the year 1972 in the Central Ground Water Board (hereinafter referred as 'CGWB'), whereas the another applicant namely, Prakash s/o Nilkanth Chandrayan in Criminal Application (APL) No.1314/2024 joined as a Surveyor in the year

1974 at Nagpur in CGWB. In the year 1988, a Cooperative Society was formed for the welfare of the members of the Society namely "The Central Ground Water Board (CR) Staff Credit Co-operative Society, Ltd., Nagpur". The applicant Rangrao Panpate became Chairman, whereas the applicant Prakash Chandrayan became Secretary since 1992 to 2008. Now, the crime is registered against them on the basis of report lodged by Mr. L. R. Burade, Nodal Officer, on filing written complainant dated 30.09.2008. On an allegation that they were involved in the embezzlement of Rs.5,65,000/- in the Society. It is alleged that they have misappropriated the said amount. In the year 2008, the executive body took a decision to conduct an "Internal Audit" of the society for the year 2006-07, by a committee formed under the chairmanship of Mr. K. P. Banerjee. In the said internal audit, certain financial alleged irregularities in respect of ten loan accounts came to the knowledge of the committee, on the basis of which the present criminal prosecution was initiated against the present applicants. On the basis of the written complaint, Crime No.257/2008 came to be registered.

3. Now, both the applications are filed by the applicants on the ground that even accepting the allegations in the FIR as it is, it would not *prima facie* constitute any offence against the present applicants. It is further contended that they are already exonerated

during the departmental inquiry and therefore, the criminal prosecution could not lie against them. The present FIR is based on the inspection report and not audit report as required under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred 'the said Act'). For all the above grounds, they seek the quashing of the FIR.

4. Heard learned Counsel Mr. Parvez Mirza for the applicants. He submitted that charge in the departmental inquiry and the prosecution launched against the applicants is of a similar nature. The standard of proof required for the departmental inquiry is lower than the standard of proof required for the criminal trial. As the charges could not be proved in the departmental inquiry, it would be difficult for the prosecution to prove the charges in the criminal proceeding. Moreover, in view of Section 81 of the said Act, no audit was carried out and entire prosecution is on the basis of the inspection report. Thus, there is no compliance in view of Section 75(2A) and 81 of the said Act. Therefore, in view of Section 81(5B), there is a legal bar to initiate the prosecution against the applicants. In view of that both applications deserve to be allowed.

5. Per contra, learned APP submitted that as far as the applicant Prakash Nilkanth Chandrayan is concerned, he is not exonerated, but the inquiry was dropped for want of original

papers. Charges in both the proceedings are distinct. The applicant Prakash Nilkanth Chandrayan during his departmental inquiry had already accepted the liability. Whether there is a compliance under Section 75(2A) of the said Act, is there or not, is a matter of trial. At this stage, *prima facie* material is sufficient to proceed with the criminal trial. The misappropriation is alleged against the present applicants is of Rs.5,65,000/- during the period of 2002 to 2008 by misusing their position and therefore, the applications deserve to be rejected.

6. Learned Counsel for the non-applicant No.2 Ms. S. W. Deshpande, reiterated the said contentions and submitted that the applicant Prakash Chandrayan has already accepted his liability and the inquiry was dropped, the applicant Prakash Chandrayan is not from the said charges.

7. On hearing both sides and on perusal of the entire investigation papers, it not disputed that the applicants respectively Rangarao Panpate was working as a Chairman of the Central Ground Water Board (CR) Staff Credit Co-operative Society Ltd., Nagpur and the other applicant Prakash Chandrayan was working as Secretary since 1992 to 2008. In the year 2008, the executive body took a decision to conduct an “Internal Audit” of the society for the year 2006-07. The inspection shows that the applicant Parakash Chandrayan has shown the loans in the name of various

employees. In fact, the said employees never obtained the loan and the said amount was misused by him for his own benefit. During the investigation, the statements of various employees are recorded and from the said statements and the various applications filed by them before the executive committee shows that the employees namely Madhusudan Baburao Mendhekar, Kirtiprasad Ajitkumar Banarji, Prakash Wasudeo never obtained any loan, but the loan was shown in their names and the said amount was misused by the applicant Prakash Chandrayan.

8. The article of charge levelled against the Prakash Chandrayan is concerned which was to the extent that while working as a head Surveyor and while functioning as a Secretary of the Central Ground Water Board Central Region Staff Credit Co-operative Society Ltd., Nagpur with effect from July 1992 has embezzled / misappropriated the money of the aforesaid society as given below:

Outstanding regular loan	:	**Rs. 2,99,200/-**
Interest on loan up to 31.03.2008	:	**Rs. 2,66,105/-**
Total loss to the Society	:	**Rs. 5,65,305/-**

9. The inquiry report and operative portion of the inquiry report shows that the inquiry was dropped against him for want of documents. The specific observation of the Chairman of CGWB shows that he has considered the circumstances and come to the

conclusion that charge framed could not be proved due to nonavailability of certain original documents incorporated in the charge sheet. Therefore, undersigned in exercise of powers conferred under Rule 15 of the CCS (CC&A) Rules, 1965 has decided to drop the charge framed against Mr Chandrayan and orders accordingly. Thus, as far as the applicant Chandrayan is concerned he is not exonerated from the liability but the inquiry was dropped against him for want of original documents.

10. As far as the applicant Panpate is concerned, admittedly, he is exonerated from the liability and during inquiry, the other applicant Chandrayan has accepted his liability. The applicant Panpate is concerned, admittedly, there is no material to connect him with the alleged offence.

11. First point raised by the applicants in the applications as to non-compliance of Section 81 and 75(2A) of the Maharashtra Co-operative Societies Act. It may be apposite to note the relevant provisions of sub-Section (5B) of Section 81 which is reads as follows:

> *(5B) The auditor shall submit [his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting,] to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and*

profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society, the said accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society.]

*[**Provided** that, where the auditor has come to a conclusion in his audit report that any person, is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report. The auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The auditor, who fails to file First Information Report, shall be liable for disqualification and his name shall be liable to be removed from the panel of auditors and he shall also be liable to any other action as the Registrar may think fit:*

***Provided further** that, when it is brought to the notice of the Registrar that, the auditor has failed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorised by him in that behalf:*

***Provided also** that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of* *the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar alongwith his audit report. Failure to file such Special Report, would amount to negligence in the duties of the auditor and he shall be liable for disqualification for appointment as an auditor or any other action, as the Registrar may think fit.]*

12. Sub-Section (1) of Section 81 casts a duty on the society to cause its accounts to be audited at least once in each financial year by Auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or an authority authorised by it in this behalf. In the event of failure of the society to intimate and file the return as provided by sub-section (2A) of section 75 and sub-section (1B) of section 79, the first provision of Section 81 empowers the Registrar to cause the accounts of the society to be audited by the Auditor from the panel of Auditor approved by the State Government or an authority authorized by it in this behalf. Under Section sub section (2A) of Section 75, the State Government is empowered to direct cost audit or performance audit or both, if it is of opinion that it is necessary in the public interest to have such audit in relation to any society or class of societies. Clause (b) of Sub Section 3 of Section 81 authorises the Registrar to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. Clause (c) of Sub

Section 3 of Section 81 empowers the Registrar or the authorized officer to carry out or cause to be carry out test audit of accounts of a Society where the audit report submitted by the auditor does not disclose the true and correct picture of the accounts. Sub-Section (6) empowers the Register to order re-audit any accounts of the Society.

13. Thus, on a plain reading of section 81, it becomes abundantly clear that provisions have been made for annual audit, in the ordinary circumstances, special cost or performance audit, to be ordered by State Government or the authorized officer, and for test audit by the Registrar or the authorized officer where the regular audit is found to be not satisfactory.

14. The action on audit report is to be taken in accordance with the provisions contained in sub-section (5B). The first proviso to sub-section 5B addresses a contingency where the auditor comes to a conclusion that any person is guilty of any offence relating to the accounts or any other offences, and in that event, he is enjoined to file a special report to the Registrar within a period of fifteen days from the date of submission of his audit report. The first proviso casts a further duty on the auditor to file a First Information Report of the offences, so disclosed, after obtaining written permission of the Registrar. The default in initiating such action entails disqualification and removal of name from the panel

of auditors in addition to any other action as the Registrar may think fit. The second proviso empowers the Registrar to cause a first information report to be fled by a person authorized by him in that behalf, where the auditor fails to initiate action in terms of the first proviso.

15. In the light of the above said provisions, the legality of registration of the first information report, on the basis of the internal inspection which is solely based on the inspection report is required to be considered. Learned Counsel for the applicants submitted that where the law provides a manner in which a particular act is to be done, it has to be done in that manner alone and no other. The aforesaid submission of the learned Counsel appears to be well grounded in facts. The inspection report on record shows that the inspection was conducted in view of the directions given by the executive committee. To consider the submission of the learned Counsel the decision of the Privy Council in the case of **Nazir Ahmad and the King-Emperor MANU/PR/0111/1936: AIR 1936 PC 253(2)**, wherein it was enunciated that 'the rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden'.

16. The aforesaid pronouncement was also followed by the Hon’ble Apex Court in the case of **State of Uttar Pradesh Vs. Singhara Singh and Ors**. **MANU/SC/0082/1963:AIR 1964 SC 351** wherein by referring the observation of the **Nazir Ahmad** referred supra the Hon’ble Apex Court expounded the legal position as under:

> *“In Nazir Ahmed's case, the Judicial Committee observed that the principle applied in Taylor v. Taylor to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves."*

17. In the case at hand, undisputedly the Auditor had not lodged the First Information Report. It is not the case of the prosecution that the Auditor submitted a special report in terms of

the first proviso to sub section (5B) of Section 81 of the Act 1960 and thereupon the Registrar gave a permission to the Auditor to lodge the report. In contrast, facts on record shows that the inspection report on the basis of which the FIR came to be lodged which does not constitute the audit report envisaged by sub-section (5B) of section 81. It is pertinent to note that the authority empowered to lodge the FIR is the Auditor or any other officer authorised by the Registrar, has not lodged the report. The method of initiation of the prosecution which is enumerated in the provision that a special report is required to be submitted by the auditor and thereupon the Registrar has to grant permission to lodge the report. A document titled "inspection report" cannot be a substitute for the statutorily prescribed procedure for initiation of the prosecution.

18. In **Mahadevrao Uttamrao Rajurkar and Anr Vs. State of Maharashtra (2020 SCC OnLine Bom 3648)**, a Division Bench decision wherein an identical fact situation, this Court quashed the first information report and the consequent prosecution as the FIR was lodged in breach of the provisions contained in sub-section (5B) of section 81 of the Act, 1960. In the said case also, the first information report was lodged by the President of the society. The said first information report was indeed accompanied by the audit report. After noting the provisions

contained in sub-section (5B) of section 81, the Division Bench analysed the import of the said provision as under:

> *"16. The complete reading of Section 5-B shows that the auditor is required to submit audit report within a period of one month from its completion and in any case, before issuance of notice of the annual general body meeting of the society.*
>
> *17. The first proviso shows that where the auditor has come to the conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, he is under obligation to file specific report to the Registrar within a period of 15 days from the date of submission of his audit report. The said proviso further reads that concerned auditor after obtaining written permission from the Registrar shall file a First Information Report of the offence. If an Auditor fails to file the First Information Report, he shall be liable for disqualification and his name can be removed from the panel of the Auditors and also liable for any other action as the Registrar may think fit.*
>
> *18. What is important is that, even before lodging the First Information Report by the Auditor himself, he has to obtain prior permission of the Registrar, though the word "prior permission" is not engrafted in the said proviso, use of words are, "The Auditor concerned shall after obtaining written permission of the Registrar, file a First Information Report of the offence". In order to give harmonious construction, "prior permission from the Registrar in writing" will have to be read by applying the principles of reading down.*

> *19. Thus, what emerges from the above discussion is that under Section 81 (5-B) of the Act, 1960, the auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of annual general body meeting, presenting the true and fair view of the financial transaction of the society and where he comes to a conclusion that any person is guilty of any offence relating to accounts or any other offences, he shall file a specific report to the Registrar within a period of 15 days from the date of submission of audit report and shall after written permission of the Registrar, file a First Information Report. On failure to do so, shall be liable for any action as the Registrar may think fit, including disqualification and removal from panel of auditors. Furthermore, when it is brought to the notice of the Registrar such failure on the part of the auditor, the Registrar shall cause a First Information Report to be fled by a person authorised by him in that behalf."*

19. The aforesaid pronouncement appears to be squarely applicable to the facts of the present case. From the perusal of the FIR, it becomes explicitly clear that the FIR is solely based on the report furnished by Chairman, Internal Audit (Inspection Committee). The first informant had lodged the report on the basis of the said inspection report.

20. In a given case, the offences are alleged to have been committed in the capacity of President and the Secretary who are

office bears of the Society. Admittedly, the law does not require that before registering the First Information Report, there must be an audit report and the finding of the commission of the offences recorded by the Auditor. However, where the allegations of commission of the offences are solely based on the audit conducted under section 81 of the Act, 1960, then the procedure prescribed in sub-section (5B) of section 81 is required to be scrupulously followed. Since the FIR in question is based on the report of the internal audit inspection, it is not open for non-applicant No.2 to fall back on the general proposition that anybody can set the criminal law in motion and the police are duty-bound to register the FIR.

21. The communication rendered by him addressing to the President CGWB Employees Credit Co-operative Society shows that he has accepted the liability that the Society had a direct loss in the form of recovery of regular loan and interest thereupon. Admittedly, the charges against the applicant Chandrayan were to the extent that being the Secretary of the Central Ground Water Board Central Region Staff Credit Co-operative Society from July 1992 had misappropriated the money of the aforesaid Society has given below and on the similar ground, the FIR was registered against him. Learned Counsel for the applicants placed reliance on the decision of **Ashoo Sundernath Tewari Vs. The Deputy Superintendent of Police** (referred supra) wherein by referring

the decision of **Radheshyam Kejriwal vs. State of West Bengal and Another**, **(2011) 3 SCC 581**, the ratio culled out can broadly be stated as follows:

> *(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
>
> *(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
>
> *(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
>
> *(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
>
> *(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
>
> *(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*
>
> *(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”*

22. The inquiry report against the applicant Chandrayan shows that considering the circumstances and facts of the case, charge framed could not be proved due to the nonavailability of certain original documents incorporated in the charge sheet and therefore, the inquiry against the Prakash Chandrayan was dropped and order was passed accordingly.

23. Thus, on going through the charges framed in the departmental inquiry and the charges levelled against the applicants, it reveals that the charges are similar. The charges against the applicants are to the extent of misappropriation of the funds of the Society and on the similar allegation the FIR was lodged. As already observed that against the applicant the inquiry was dropped.

24. This situation is clearly covered by the proposition contained in clause (6) of para 102 of the judgment in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335** wherein the observations are as under:

> *"(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party."*

25. In view of the above discussion and considering the fact that due procedure prescribed in Section 81(5B) of the Act was not followed before lodging of the FIR subject to the aforesaid observations, the petition deserves to be allowed. Hence the following order:

ORDER

(i) Criminal Application (APL) No.1320/2024 and Criminal Application (APL) No.1314/2024 are **allowed**.

(ii) The First Information Report bearing Crime No.257/2008 dated 30.09.2008 registered with Police Station Sadar, District Nagpur for the offence punishable under Sections 408, 477-A read with Section 34 of the Indian Penal Code and RCC No.3257/2009 pending before the 19th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur, arising out of the same, stands quashed and set aside, against the present applicants.

(iii) It is clarified that we have not at all entered into the merits of the allegations in the instant FIR.

The application is disposed of in the above terms.

(NANDESH S. DESHPANDE, J) **(URMILA JOSHI-PHALKE, J.)**

Sarkate.