IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.1021/2025

Anant S/o Wamanrao Ambekar,
Aged 60 yrs., Occ. Private,
R/o. 52, "Dhruva Apts"
Shivaji Nagar, Pushpalata Tidke
Chowk, Nagpur.

...**PETITIONER**

VERSUS

1. Sameer S/o Suresh Saraf,
   Aged 54 yrs., Occ. Managing Director,
   Aditya Angha Multi State Credit
   Co-operative Society, R/o. 425 Anand Nagar,
   Nagpur.

2. Omkar S/o Udayrao Kawale,
   Aged 35 yrs, Occ. Managing Director,
   Aditya Angha Multi State Credit Co-operative
   Society, R/o. 425, Anand Nagar, Nagpur.

...**RESPONDENTS**

Mr. U. A. Dhabe, Advocate for petitioner.
Mr. P. Naidu, Advocate for respondent Nos. 1 & 2.

CORAM : M. M. NERLIKAR, J.
DATE : 17.03.2026

ORAL JUDGMENT :

Heard.

2. By this petition, the petitioner challenges the order dated 07/08/2025, wherein the Criminal Revision filed by the Respondent herein was allowed and the order of issuance of process passed by the learned Judicial Magistrate First Class, Corporation Court No.2, Nagpur, dated 30/05/2024 passed below Exh.13 in RCC 620/2022 was set aside. Against this impugned order, the present petition is filed.

3. The learned counsel for the petitioner submits that in collusion with the Aditya Angha Multi-State Credit Cooperative Society ("Society"), one Vijay Dangre had mortgaged the property of the petitioner and obtained the loan of Rs. 4.20 crores. Not only the property of the petitioner, but other several properties were mortgaged by the said Vijay Dangre to the Society to obtain a loan of Rs. 4.20 crores. Vijay Dangre was not authorized to mortgage the property of the petitioner. The complaint was filed on the basis of the allegation that Vijay Dangre did not have power of attorney to mortgage the property. Waman Ambekar who is the original owner never created third party interest. It is alleged that based on bogus

power of attorney, Vijay Dangre is dealing with the disputed property and also threatening the petitioner. Based on these allegations, the complaint was filed. However, the complaint was amended at a later point of time and the present respondents were arrayed as accused. So far as the present respondents are concerned, they are the officials of the Society with whom the properties are mortgage, the counsel further submits that they ought to have verified the property which is mortgaged with them before sanctioning loan which they failed to do so and therefore in collusion with Vijay Dangre, the properties have been mortgaged and therefore officials/present respondents are also involved in the alleged crime. He submits that when a notice was issued to the Society, it was replied that Mr. Vijay Dangre and his family are the members of the Society and he had availed credit facility from the Society. It is further observed in the reply filed by the Society that by way of mortgage deed dated 01/04/2021 only 2548.32 square meters of land was mortgaged as an additional mortgage apart from various other properties to secure the loan from the Society, therefore it is denied that complete property is under mortgage. He submits that this fact itself shows that in collusion with Vijay Dangre, the Society officials have acted as it has been admitted that Vijay Dangre is the member of the Society and he had availed credit facility from the Society. He submits that all these factors ought to have been considered by the Revisional Court, therefore the Revisional Court has committed gross error in setting aside the order of issue of process, he therefore submits that the order passed by the Magistrate was after application of mind. However, considering above background he submits that impugned order is bad in law and requires to be quashed and set aside.

4. On the other hand, the learned counsel appearing for respondents submits that there are no averments in the complaint against respondents. The Society had facilitated loan on mortgage of the property. Whatever dispute is between the petitioner and Vijay Dangre, has nothing to do with the Society and their officials. He further submits that after verifying the documents, the loan was disbursed and no fault can be

attributed to the Society officials. Before initiation of any criminal proceedings against the Society officials, it is necessary to see the intention and in the entire complaint, neither there are allegations against the Society officials nor there are averments. He submits that in order to set criminal law in motion, the act should be intentional. Therefore, as no criminal act was alleged and without application of mind, the Magistrate had passed the order of issue process and therefore the Revisional Court has rightly set aside the order issuing process.

5. I have considered the rival submissions. It appears from the record that on 25/10/2021, the petitioner filed the complaint under Section 156(3) of the Code of Criminal Procedure ("Code"). The Magistrate by an order dated 27/01/2022 was pleased to reject the prayer of the petitioner seeking direction under Section 156(3) of Code. However, the Magistrate has decided to proceed under Section 200 of Code. It further appears that thereafter on 20/9/2022, the Judicial Magistrate First Class was pleased to pass an order directing the Ajni Police Station to conduct investigation in respect of

allegations in the complaint and submit report under Section 202 of the Code. It further appears that the concerned police station has submitted the report by observing that the dispute is of civil nature. It further appears that it is only for the first time i.e. on 22/04/2024, i.e. almost after 3 years, the petitioner has filed an application Exh. 24 for amendment of the complaint by adding the present respondents as non-applicants in the original application. The said amendment application was allowed by an order dated 04/05/2024 by passing the order below Exh 24. Lastly, on 30/05/2024, the Judicial Magistrate First Class, Corporation Court No. 2, Nagpur, was pleased to issue process against non-applicant No. 2, 2-A, and 3. Non-applicant number 2-A, and 3 are Society officials. Non-applicant No. 2-A is authorized Officer of the Society and 3 is the Managing Director of the Society. The only allegations against respondents appeared from the arguments of the learned counsel for the petitioner that without verifying the documents, Society has disbursed loan to Vijay Dangre on mortgaging property of the petitioner with other several properties. After perusal of the entire complaint including amended complaint, I find that except for the statement which was made by the petitioner that he has received the information from reliable source that Society by accepting forged document, has given the facility of loan to Vijay Dangre to the tune of Rs. 4.20 crores, except this, there is no other averments so far as the culpability of the present respondents are concerned. It is necessary to mention at this juncture that criminal law can set in motion only when there is criminal act on the part of the accused. It is neither averred as to what act was committed by the respondents nor it could be gathered from the entire complaint what role has been played by respondents. So also, whether the act is intentional or not. Therefore, merely saying that the documents have not been verified before advancing the loan is not sufficient. It is for the complainant to aver in what way the Society officials have committed criminal act. It is further necessary to mention that though the present respondents are by way of amendment made accused, however no averment is made even in the amended complaint.

Therefore, in the absence of specific averments against the respondents, it is very difficult to accept that respondents have committed offence. Even from the averments it cannot be gathered that respondents have acted in collusion with Vijay Dangre, for committing the present offence. What transpires from the entire facts is that the disputed property which was mortgaged was only to the extent of 2548.32 square meters of land. There are other several properties which are not belonging to the petitioner were also mortgaged and on that basis, it appears that loan was sanctioned. It is to be noted that the learned counsel for the petitioner has issued notice to the Society to which the bank has replied on 07/10/2021 stating that Vijay Dangre and his family are the members of the Society and on that basis, he availed credit facility from the Society. It is only after this reply, the respondents were made accused on the basis of the fact that said Vijay Dangre is the member of the Society, therefore he has acted in collusion with Society officials and committed the said offence, as in the original complaint there was no whisper about the said fact nor the respondents were made accused. Further it is to be noted that the counsel for the petitioner has also placed on record one letter issued by society to Vijay Dangre dated 30/09/2021, wherein it is specifically stated that the disputed property which is involved on which the loan was advanced, said Vijay should sort it out and if not, he should repay the entire amount which was advanced by the respondent - Society. This fact itself shows that whatever dispute is in between the petitioner with Vijay Dangre, the respondents have no role in the same and unnecessarily the Society and its officials were dragged in the serious offence of criminal nature. Therefore, considering all the facts narrated above, the question would be on what basis the issue process order was passed by the Magistrate. No doubt, the order dated 30/05/2024 passed by the Judicial Magistrate First Class in respect of issuance of process is a detailed order. However, so far as the present respondents, that is non-applicant No. 2-A and 3 are concerned, absolutely there is no application of mind for the reason that there is no whisper as to averments against respondents in the original complaint or either in the amended complaint and therefore has observed in paragraph No. 23 which reproduced as under.

> *"23 Considering allegations in respect of proposed accused/non-applicant No.2, 2-A and 3 for committing fraud with intention to cheat the complainant, there is no reason to disbelieve his claim to take action against proposed accused/non-applicant No.2, 2-A and 3 to find out real truth behind the happening of the incident. Therefore, I am of the opinion that the complainant has successfully explained his claim in the light of allegations. As the verification statement of the complainant recorded on oath and primary report under Section 202 of Cr.PC. is on record, I do not found any reason to disbelieve the claim of complainant at this juncture.*

Further, in paragraph Nos. 26 and 27, the Magistrate has observed as under:-

> *"26. So far as allegations made in the complaint against proposed accused/non-applicant No.2, 2-A and 3 are concerned, the complainant has specifically mentioned his claim that due to conspiracy of non-applicants/proposed accused, he has suffered from mental agony due to alleged act on the part of proposed accused/non-applicant No.2, 2-A and 3 inter-se. Report filed under section 202 of Cr.PC. surprisingly shows that Inquiry Officer has expressed that matter is of civil background and of confusing nature. Mere observation of Inquiry Officer that matter is of civil background and of confusing nature cannot be a defence*

> *available to Inquiry Officer to avoid his responsibility to conduct detail inquiry in the matter.*
>
> 27. If there is a prima-facie case made out against proposed accused/non-applicant No.2, 2-A and 3 then question as to allegations can be raised to them for which they are answerable. Therefore, to know the other side and to decide the case on merit, it will be proper to issue notice/summons to proposed accused/non-applicant No.2, 2-A and 3 by taking cognizance in this case which goes to visualize the substance prima-facie for issuance of process against accused/non-applicant."

Therefore, upon perusal of the brief reasoning, those reasoning appear to be on the basis of presumption and surmises. When there is no whisper in the complaint about the criminality committed by the respondents herein, the Magistrate ought not to have passed the order only on the basis of the fact that in order to find out the real truth, process is required to be issued. It is absolutely a misconception of law. So far as the private complaints are concerned, it is necessary that there should be specific averments making allegations against the concerned accused persons. However, when there are no allegations in the complaint itself, how the Magistrate has applied his mind and to what facts. Issuance of process is a serious judicial act and not a routine formality as it initiates criminal proceedings and affects an individual's liberty and therefore at least it was expected from the Magistrate to apply his mind to the complaint which was filed. In absence of averments in the complaint itself, it cannot be said that the Magistrate has passed an orders of issue of process by applying his mind. So far as the impugned order is concerned, the Revisional Court has not only considered the factual background of the matter, but also has given cogent reasons in support of the order. It is necessary to reproduce paragraph Nos. 11, 12 and 13 of the impugned order as under:-

> *"11. The sum and substance of the dispute is that the accused No.2 Vijay Dangre has been proceeded to obtain loan of more than Rs. 4 Crores from the bank of these applicants by mortgaging the said property on the strength of the said power of attorney by misusing the same. After close scrutiny of the entire facts and circumstances, what can be transpired from the record is that main emphasize of the complainant is that the accused No.2 Vijay Dangre is the member of the said bank of the accused No.2 and 3. However, in the amendment application (Exh.24), only it has been mentioned that the accused No.2-A, the Managing*

Director of the said society whose name is mentioned in the letter No. Legal 10935/2021 dated 07/10/2021 addressed to the counsel for the complainant mentioning that the accused and his family are the members of the society and availed credit facility from the society and also mentioned the mortgaged deed dated 01/04/2020. Moreover, in the initial para II, it is mentioned that the Branch Manager of the said society at the time of occurrence of the offence is also liable and accountable and thus, it is alleged that these applicants/accused are responsible and accountable for committing the offence in collusion who failed to verify the credentials of accused Vijay Dangre and the documents given by him.

12. On the basis of aforesaid averments, it can safely be gathered that merely observing that the main accused is the member of the society/bank of these applicants and on the basis of reply given on their behalf to the notice, the learned J.M.F.C. allowed the amendment application (Exh.24) by applying the provisions of section 319 of Cr.P.C. Thereafter, while passing the impugned order of issue process against these applicants, the learned court below simply observed that these applicants acted in collusion with the accused No.2 and committed the offence by doing the conspiracy. However, on careful perusal of the copies of documents, it reveals that these applicants have acted in discharge of their official duties. In fact, relying on the power of attorney which was the registered document, mortgaged deed was executed in respect of the said property and, therefore, merely on the basis of allegation *that without verifying these facts about the death of the person executed power of attorney, the learned Magistrate arrived at the conclusion that there is no reason to disbelieve the contention of the complainant that these applicants have acted in collusion and participated in the conspiracy in committing the said offence.*

13. In the light of aforesaid guidelines laid down by the Hon'ble Supreme Court in Lok Ram (supra), the learned court below ought to have considered this aspect after the evidence adduced by the complainant by considering the entire circumstances on record. However, by adopting a casual approach, the learned court below allowed the amendment application and issued process against these applicants when it is apparent on the face of the record that there is no sufficient material or grounds for proceeding against these applicants merely on the allegations of collusion when it is apparent that they are just office bearer and acted in discharge of their official duty. Though the learned court below allowed the amendment application, it ought to have considered as to whether specific averments are made out by giving necessary particulars regarding any such role played by these applicants to show that they were having prior knowledge about the said fraud, forgery and fabrication of the documents and whether in spite of having such knowledge they have acted with the main accused No.2 in furtherance of their common intention. However, nothing has been considered while passing an order to issue process against these applicants. Therefore, in view of these reasons, I am of the considered view that the order passed

> *by the learned Magistrate dated 30/05/2024 below Exh.1 to issue process to the extent of the applicants / accused No.2-A and 3 is not legal, proper and correct and therefore, deserves to be set aside. Accordingly, point No.1 is answered in the affirmative."*

Therefore, the Revisional Court has considered all the relevant facts and only then has come to the conclusion that order of issue of process is bad in law and accordingly it was set aside.

6. After considering the entire record, I am of the considered opinion that there is no material or averments to proceed against respondents herein, therefore I do not find any perversity or error in the order dated 07/08/2025 passed by the learned Additional Sessions Judge, Nagpur in Criminal Revision No.162/2024.

7. Considering the above facts and circumstances, the writ petition is accordingly dismissed.

(M. M. NERLIKAR , J.)

Gohane