

(2024) 05 BOM CK 0039

In the Bombay High Court

Case No : Criminal Writ Petition No.157 Of 2024, Criminal Application No.1341,
1370, 1418 Of 2024

Rajendrakumar Aatmaram Agarwal And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 47, 409, 420, 467, 468, 471
Maharashtra Protection Of Interest Of Depositors (In Financial Establishments) Act,
1999 — Section 2(d), 3
Banking Regulation Act, 1949 — Section 5(c), 56, 56(a), 56(c)(cci)

Citation : (2024) 05 BOM CK 0039

Hon'ble Judges : Mangesh S. Patil, J;Shailesh P. Brahme, J

Bench : Division Bench

Advocate : Vijay Thorat, Atul M. Karad, M.M. Nerlikar, Ajay T. Kanawade, P.R.
Katneshwarkar, P.M. Salunke, Y.V. Kakde, N.B. Narwade

Final Decision : Dismissed/Disposed Of

Judgement

Mangesh S. Patil, J

1. Heard. Rule in all these matters. Rule is made returnable forthwith.
2. This is a writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking quashment of Crime No.121/2022 registered with Kotwali Police Station, Ahmednagar and subsequently transferred to the Economic Offences Wing, Ahmednagar, for the offences punishable under Section 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code and also under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (herein after the MPID Act).
3. The substance of the allegations as can be deduced are to the effect that

respondent No.2 is a Cooperative Bank registered under the Maharashtra Cooperative Societies Act, 1960 (herein after the Cooperative Societies Act). The Reserve Bank of India (RBI) issued licence to it for banking business by order dated 10.12.1986. The petitioner was elected as a Director on the Board of Directors for the tenure from November 2014 to November 2019. The RBI appointed an administrator to manage the affairs of the bank with effect from 01.08.2019. After the tenure of the Administrator was over, the petitioner was elected as a Chairman of the Board of Directors for the tenure 02.12.2021 to December 2026. He is stated to have resigned on 06.07.2022 after noticing the irregularities in the administration of the bank by other directors and the staff.

4. Noticing loss suffered by respondent No.2 – Bank resulting in negative net worth, the RBI by order dated 06.12.2021 put restrictions on the bank and thereafter by the order dated 04.10.2023 it cancelled the bank's licence and a liquidator was appointed on 08.11.2023.

5. The respondent No.3 lodged a complaint with the Economic Offences Wing , Ahmednagar (EOW) alleging fraud having been practised while distributing loans. The Administrator was directed by the EOW and conducted an inquiry.

6. The Administrator on inquiry concluded that irregularities were committed in respect of disbursement of loan in eight loan accounts holding one Dilip Gandhi, a borrower and guarantor as well as the valuer responsible for it.

7. Simultaneously, respondent No.3 filed a complaint with Kotwali Police Station in the year 2019, however, since nothing was transpiring, Criminal Writ Petition No.1224/2020 was filed in this Court and pursuant to the directions of the Court the present crime was registered at Kotwali Police Station and subsequently it was transferred to the EOW.

8. It is alleged in the FIR that respondent No.3 is the member and account holder of respondent No.2 - bank. He was also a director between 2008 and 2014 and having personal knowledge about the statutory audit that was being conducted every year. He alleges that after having gone through the audit reports for the period between 2015-2016 and 2020-2021 he realized that there was rampant mismanagement and even misappropriation committed in connivance by the directors, officers and the borrowers causing huge loss to the Bank. He has given several details in respect of the specific loans disbursed to various entities and the manner in which misappropriation was committed.

9. The learned advocate Mr. Thorat for the petitioner at the outset would submit that the petitioner does not have any objection for allowing the applications for intervention. He would also submit that even he has not been objecting to the prosecution and is not putting up any challenge to the offences being invoked against him under the Indian Penal Code under different sections. He submits that he is merely putting up a challenge to the petitioner's prosecution under the provisions of the MPID Act.

10. He would submit that the object for which MPID Act was brought into the statute book was to monitor functioning of the Financial Establishments in the State and to protect the interest of the depositors who are assured of attractive interest but fail to keep the promise resulting in public resentment since they are duped by the unscrupulous activities.

11. He would submit that Section 3 of the MPID Act makes any fraudulent default in repayment of deposit by a financial establishment a crime. Section 2(d) defines "Financial Establishment" and though it expressly excludes a co-operative society owned or controlled by any State or Central Government, his emphasis is on the fact that even this definition of "Financial Establishment" expressly excludes a "Banking Company" as defined under Clause (c) of Section 5 of the Banking Regulation Act, 1949 (the BR Act). He would submit that though respondent No.2 - bank is neither owned and controlled by the State Government or the Central Government, it would still be a "banking company" as defined under Section 5(c) of the BR Act by implication. He would advert our attention to the provision of Section 5(c) of the BR Act which defines a 'Banking Company' to mean any company which transacts the business of banking in India. He would submit that Section 56 of the BR Act expressly lays down the extent to which its provisions would apply to the Co-operative Societies. He would submit that by virtue of amendment in Section 56 by the Act 39 of 2020, it has now been converted as a non-obstante clause and expressly states that notwithstanding anything contained in any other law, the provisions of the BR Act would apply to or in relation to co-operative societies as they apply to the banking companies subject to certain modifications. He would submit that by Sub-Clause (cci) of Clause (c) of Section 56, definition of Co-operative Bank and by a similar Sub-Clause (ccii-a) Co-operative Societies have been defined to be a Co-operative Bank or a Central Co-operative Bank and a society registered under Co-operative Societies Act. He would, therefore, submit that since by virtue of such amendment effected in the year 2021, Section 56 expressly declares that the provisions of the BR Act would have primacy over any Act in respect of a co-operative society, the whole purpose of promulgating MPID Act as declared in the objective stands subserved. He would submit that the very object which led the State legislature to bring into the statute book the MPID Act stands sub-served by implication since even a Co-operative Bank would have to be compliant with the provisions of the BR Act having perineal supervision of the RBI.

12. Mr. Thorat would then submit that "Financial Establishment" as defined under Section 2(d) of the MPID Act inter alia excludes the "Banking Company" as defined under Clause (c) of Section 5 of the BR Act. In its wisdom the State legislature had thought it appropriate to exclude the banking companies in all probability for the obvious reasons that all these banking companies would be under the supervision of the Reserve Bank of India. If by virtue of amendment, for all practical purposes a co-operative bank has been taken under the sweep of the Central legislation like the BR Act, the purpose for which the MPID Act was enacted would no longer be necessary qua the co-operative banks registered

under the Co-operative Societies Act.

13. Mr. Thorat would refer to and rely upon the decision in the matter of Pandurang Ganpati Chaugule Vs. Vishwasrao Patil Murgud Sahakari Bank Ltd.; (2020) 9 SCC 215 and particularly the conclusion drawn therein based on the interpretation of the provisions of the BR Act and the amendment effected therein in Section 56(a) which came into being on 01.03.1966. He would precisely advert our attention to the paragraph No.103 of the judgment, wherein, it has been observed that as a consequence of inclusion of Section 56(a) in the BR Act with effect from 01.03.1966, the category of banking companies as defined under Section 5(c) of the BR Act would encompass co-operative banks registered under the State Co-operative Laws and Multi-State Co-operative Banks registered under the Multi-State Co-operative Societies Act, 2002.

14. Per contra, the learned APP, the learned advocate for respondent No.2, the learned advocate for respondent No.3 and that of the intervenors would submit that the very stand of the petitioner that any co-operative bank registered under the Co-operative Societies Act would stand excluded from the ambit of MPID Act that too relying upon the decision in the matter of Pandurang Ganpati Chaugule (supra) is fallacious. A division bench of this Court in the matter of Shridhar S/o Udhav Kolpe V. State of Maharashtra (Criminal Application No.5130 OF 2017 dated 03.09.2018) has held that the provisions of the MPID Act would apply to the co-operative banks except those have been expressly excluded by virtue of they being owned and controlled by the State Government in accordance with definition of "Financial Establishment" contained in Section 2(d) of the MPID Act.

15. They would submit that in view of the decision in the matter of New Horizon Sugar Mills Ltd. Vs. Government of Pondicherry; (2012) 10 SCC 575, State legislatures have been declared to have the authority to enact laws concerning the financial establishments to safeguard the interest of the investors. They would refer to the decisions in the following matters :

- i. K.K. Baskaran Vs. State; (2011) 3 SCC 793,
- ii. State Vs. K.S. Palanichamy ; (2017) 16 SCC 384
- iii. PGF Ltd. Vs. Union of India; (2015) 13 SCC 50

16. On facts, they would argue that it is a matter of fraud exceeding Rs.100 crore and the offence being cognizable, the prosecution should be extended an opportunity to substantiate the charge.

17. It is necessary to reiterate that as has been submitted by the learned advocate Mr. Thorat, the petitioner has not been seriously objecting to invocation of the provisions under the Indian Penal Code and is merely interested in putting up a challenge to invocation of Section 3 of the MPID Act. Consequently, the inquiry before us is limited in ascertaining as to if a co-operative bank registered under the Maharashtra Co-operative Societies Act stands excluded from the net of the MPID Act, by virtue of implication, in view of amendment w.e.f.

01.04.2021 to Section 56 of the BR Act making it applicable to the co-operative banks registered under the Central or State legislation.

18. At the outset, it is necessary to bear in mind that as far as power of the state legislature in enacting MPID Act is concerned, the issue has been authoritatively put to rest by the observations of the Supreme Court in the matter of New Horizon Sugar Mills Ltd. (supra).

19. Obviously, the object of enacting MPID Act is to secure the interest of the investors in the wake of mushrooming growth of the financial establishments. Section 3 of the MPID Act inter alia provides for punishment for any financial misdeeds as contemplated therein. It uses the word "Financial Establishments" which has been defined under Section 2(d) of the MPID Act and reads thus :

"Section 2 (d) : "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949."

20. As can be seen, the State Legislature in its wisdom has excluded the Co-operative Societies owned and controlled by the State Government, it also excludes the 'banking companies' as defined under Section 5(c) of the BR Act.

21. At the first blush, the erudite submission of the learned advocate Mr. Thorat relying upon Pandurang Ganpati Chaugule (supra) is indeed attractive. However, it overlooks the fact that Pandurang Ganpati Chaugule (supra) is a matter, wherein, the Supreme Court was called upon to decide as to if the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) are applicable to the Co-operative Banks registered under the State legislation. It is in this context that Pandurang Ganpati Chaugule (supra) will have to be understood. The issue before us was not germane to the decision in the matter of Pandurang Ganpati Chaugule (supra). With respect, a co-operative bank by virtue of Section 56(a) having been included in the BR Act with effect from 01.03.1966, would be a banking company as defined under Section 5(c) of the BR Act. However, the issue before us presents a peculiar state of affairs, which is in the context of MPID Act which makes certain acts punishable precisely for the object of securing interest of the investors. Even if a co-operative bank for the purpose of the provisions of SARFAESI Act would be a banking company as has been held in Pandurang Ganpati Chaugule (supra), the definition of "Financial Establishment" contained in Section 2(d) of the MPID Act would be decisive.

22. The State Legislature in its wisdom, while defining "Financial Establishment" has consciously excluded only the Co-operative Societies owned and controlled by the State Government as a distinct and separate category, as distinguished from a "Banking Company" as defined under Section 5(c) of the BR Act. If this be so, harmonious interpretation will have to be resorted to in gathering the

intention of the legislature. Had it really intended to exclude the provisions of MPID Act qua any establishment governed by the BR Act, it could have expressly stated so.

23. Bearing in mind the fact that Section 56(a) was inserted in BR Act on 01.03.1966 one will have to proceed on the premise that the State legislature was aware that even a co-operative bank registered under the Co-operative Societies Act would be governed by the BR Act. If, still, it has defined 'Financial Establishment' by expressly making distinction between a 'co-operative society' owned and controlled by the State Government and a 'Banking Company' as defined under Section 5(c) of the BR Act, in our considered view, 'Financial Establishment' as defined under Section 2(d) would include a co-operative bank, not owned and controlled by the Central Government or the State Government. The issue considered and decided by the Supreme Court in the matter of Pandurang Ganpati Chaugule (supra) will have to be understood in the backdrop of these factors, which in our considered view are important.

24. Conversely, merely because a co-operative bank to which the provisions of the BR Act are applicable by virtue of insertion of Section 56(a) with effect from 01.03.1966 or by virtue of amendment coming into effect from 01.04.2021 thereby transforming into a non-obstante clause, cannot be said to have been excluded by implication from the ambit of the MPID Act, in view of the definition of 'Financial Establishment' contained in Section 2(d) of the MPID Act.

25. True it is that any co-operative bank registered under the Central or State legislature to which provisions of BR Act are applicable, would be under supervision of the RBI. However, one cannot lose site of the fact that the BR Act merely seeks to have a control over the functioning of all the banking companies or the co-operative banks, however, it does not contain any specific provision defining any act or provide for any punishment for the offences which are punishable under Section 409, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code. Only some acts have been made punishable by making the offences cognizable as mentioned in Section 47.

26. Consequently, it cannot be said that the purpose for which MPID Act has been brought in the statute book stands served by bringing the co-operative banks registered under the State legislature within the sweep of the BR Act. Both these enactments operate in different spheres.

27. With respect, the line of reasoning we have resorted to gets corroboration from a similar view taken by the Supreme Court in the matter of Soma Suresh Kumar Vs. Govt. of A.P.; (2013) 10 SCC 677.

28. In view of the above, the Criminal Writ Petition is dismissed. Pending criminal applications are disposed of. Rule is discharged.