
(2021) 08 BOM CK 0008

Bombay High Court

Case No: Writ Petition (ST.) No.12345, 12404 Of 2021

Ashok Sadhuram
Mulchandani And Ors

APPELLANT

Vs

State Of Maharashtra
And Ors

RESPONDENT

Date of Decision: Aug. 13, 2021

Acts Referred:

- Maharashtra Co Operative Societies Act, 1960 - Section 81(5), 81(5B)

Hon'ble Judges: S.S. Shinde, J; N.J. Jamadar, J

Bench: Division Bench

Advocate: Ravi Kadam, S.R. Phanse, Vaa patil, Sudhanva Bedekar, Nilesh Ojha, Ravindra Mali, Pallavi Kulkarni, A.S. Pai

Judgement

1. Heard Mr. Ravi Kadam, learned Senior counsel for the petitioners in Writ Petition (St.) No.12345 of 2021 and Mrs. Ojha, learned counsel for the

petitioners in Writ Petition (St.) No. 12404 of 2021 and Mrs. Pai, learned PP for the State in both the petitions.

2. Issue notice to the respondents returnable on 30 th August, 2021.

3. Mrs. Pai waives notice for respondent No. 1-State.

4. In addition to service of notice through Court, the petitioners shall serve a private notice ba Registered Post A.D. and/or ba Courier service and/or

ba hand delivera or e-mail/fax on the respondent Nos. 2 and 3 (In Writ Petition (St.) No. 12345 of 2021) and respondent No. 2 (In Writ Petition (St.)

No. 12404 of 2021) and shall file affdavit of service with tangible proof before the returnable date.

5. The learned counsel for the petitioners have pressed for ad- interim relief to the effect that no coercive action be taken against the petitioners

during the pendency of the Writ Petitions.

6. Mr. Kadam, learned Senior Advocate, invited the attention of the Court to the various orders passed by this Court arising out of the first information

reports registered in respect of the subject matter which, according to Mr. Kadam, forms the subject matter of this petition.

7. It was submitted that in respect of the very same transaction, which is the subject matter of first information report, in respect of which this Court

has granted interim relief, the instant first information report has been lodged. The attention of the Court was invited to items Nos. 91, 92 and 93 of the

chart, included in the first information report dated 18th July, 2019, to show that in respect of the same group of borrowers the instant first information

report is lodged based on the Test Audit Report conducted by respondent No. 2. Mr. Kadam would further urge that the respondent No. 3 has granted

permission under section 81(5B) of the Maharashtra Co-Operative Societies Act, 1960, post haste, and without application of mind.

8. Mr. Ojha, learned counsel for the petitioners in Writ Petition (St.) No. 12404 of 2021 adopted the submissions of Mr. Kadam and further urged that

despite repeated orders passed by this Court, multiple first information reports are being lodged in respect of the very same transactions. Attention of

the Court was invited to the order passed by this Court in Writ Petition No. 232 of 2021 and connected matters (Chandrashekhhar Ahirrao and Ors. vs.

State of Maharashtra and Anr.) dated 12th March, 2021 (Coram: S.S. Shinde & Manish Pitale, JJ.); Writ Petition No.1443 of 2021 (Vinaa Vivek

Arhana vs. State of Maharashtra and Anr.), dated 19th March, 2021 (Coram: S.S. Shinde & Manish Pitale, JJ.); Writ Petition No. 4134 of 2019 dated

27th August, 2019 (Coram: Ranjit More & N.J.Jamadar, JJ.), and Writ Petition NO. 229 of 2021 dated 18th December, 2020 (Coram: Prasanna

Varale & V.G.Bist, JJ.) wherein this Court has granted ad-interim/interim protection.

9. Mrs. Pai, learned PP, however, urged that the subject matter of the instant first information reports and previous first information report cannot be

said to be one and the same. Emphasis was laid on the fact that the instant first information reports are based on the report submitted by the auditor

under section 81(5) of the Maharashtra Cooperative Societies Act, 1960 and the permission granted by the Registrar to lodge the report. Having

regard to the magnitude of the alleged scam, the learned PP submitted, the petitioners do not deserve any interim protection.

10. We have considered the submissions. We have also perused the material on record so as to ascertain the justifiability of grant of ad-interim relief.

11. We find substance in the submission of Mr. Kadam that that the transaction in respect of the first information report No. 806 of 2019 has been

lodged, prima facie, appears to be the subject matter of the first information report No. 525 of 2021. From the perusal of the instant first information

report it, prima facie, appears that it is in respect of the loan accounts of the Sonkar Group i.e. account Nos. 977, 998 and 1087. Item Nos. 91, 92 and

93 referred to in first information report No. 806 of 2019 are in respect of the same group of borrowers and account Nos. 977 and 1087, apart from

account No. 928.

12. There can be no qualm with the proposition that offence warrant thorough investigation so as to unearth the alleged fraud. However, once the first

information report in respect of a transaction or occurrence is registered, it is trite, there can be no second first information report in respect of the

very same transaction or occurrence. There is no bar for investigation or further investigation in the offences committed in the course of same

transaction. But there cannot be second first information report.

13. In Writ Petition No. 1443 of 2021 (Vinaa Arhana vs. State of Maharashtra) referred to above, after adverting to the earlier orders in the above

referred petitions, this Court observed as under:

8] It is also brought to our notice that in Writ Petition filed Co-Accused bearing Writ Petition No.1380 of 2021 arising out of the same FIR, we have

granted ad-interim relief to the Petitioner therein by relying upon the earlier reasoned order granting interim/ad-interim relief to the Petitioners similarly

placed.

9] We find that the subject matter of the present Petition pertains to the transaction which was the subject matter of the FIR in which the Petitioners

have approached this Court and interim/ad-interim relief has been granted in their favour to the extent that coercive action would not be taken against

the Petitioners therein.

10] Hence we are of the opinion that the Petitioners before this Court the instant Writ Petition also deserves for limited ad-interim relief/protection as

granted to the similarly situated Petitioners in the aforementioned Writ Petition pending before this Court. We, therefore, inclined to grant such limited

protection for the reason that we intend to finally dispose of this Petition on the next date of hearing.

14. In Writ Petition No. 1760 of 2021 (Bhalla @ Mahadev Sable & Ors vs. The State of Maharashtra & Anr.) after noticing that the investigating

agency was filing more than one first information report in respect of same subject matter, this Court had observed, inter alia, as under:

6] We have come across various writ petitions pertaining to the affairs of said bank, and it prima facie appears that, the investigating Agency officers are

registering the FIR mechanically without verifying that whether the new complaint/complaints are filed on the same set of allegations about same

incident, as alleged in the earlier FIR's or said complaints are about different incidents. As a result, one accused has fled more than one writ petition

for quashing the FIR and this Court is over-flooded by such writ petitions on the ground that, on same set of allegations at the instance of different

persons, multiple FIR's have been registered. In that view of the matter we deem it appropriate to impress upon the investigating officers to carefully

look into the contents of new complaint/complaints which would be received in future, in respect of affairs of said bank, and then take

considered/conscious decision, whether to register the new FIR or consider the said allegations in the FIR already registered on same set of allegations.

15. At this stage, we are of the prima facie view that the challenge based on the ground of lodging of second first information report in respect of the same set of transactions warrants consideration. The petitioners, therefore, deserves interim protection lest their personal liberty would be seriously jeopardized.

16. We, therefore, direct that though the investigating officer may proceed with the investigation, yet, no coercive action be taken against the petitioners till 30th August, 2021.

17. The petitioners shall, however, render full cooperation in the investigation.

18. The petitioners are directed to appear before the concerned investigating officer on 16th, 18th and 20th August, 2021 in between 10 am to 12 noon

and thereafter as and when called by the investigating officer.

19. Since we have posted the above numbered petitions and other petitions pertaining to Seva Vikas Cooperative Bank Limited for hearing and final

disposal on 30th August, 2021, we deem it appropriate to tag these petitions with those petitions.

20. List on 30th August, 2021.