

HIGH COURT OF MADHYA PRADESH**BENCH : Gurpal Singh Ahluwalia, J.****Date of Decision: March 20, 2024**

Miscellaneous Criminal Case No. 6453 of 2017 and Miscellaneous Criminal Case No. 54865 of 2023

AWADESH NARAYAN TIWARI AND OTHERS**Vs.****SHISHIR KHARE AND OTHERS****Legislation:**

Sections 420, 409, 467, 120-B of the Indian Penal Code (IPC)

Society Registrations Adhiniyam, Section 27, Section 32, Section 40

Sections 190, 156(3), 202 of the Cr.P.C.

Order 39 Rule 1 & 2 of CPC

Section 138 of the Negotiable Instruments Act

Subject: Criminal cases relating to the dispute in the management of a Society, Chanakya Kautilya Educational Institute, involving allegations of misappropriation of funds, embezzlement, and forgery.

Headnotes:

Application under Section 482 of Cr.P.C. for quashing order taking cognizance of offences under Sections 420, 409, 467, 120-B IPC - Background involves dispute in Society's management and allegations of embezzlement and forgery [Para 3].

Allegations of misappropriation of Society's funds amounting to Rs. 2,23,49,679/- and misuse of authority in managing Society's bank accounts and assets [Paras 4, 8].

Contentions raised regarding the locus of the complainant, as his resignation from Society was accepted - Court's analysis on who can set criminal law in motion [Paras 9, 13, 14, 18, 19].

Rejection of application under Section 156(3) of Cr.P.C. doesn't prevent Magistrate from proceeding with complaint under Sections 200, 202 of Cr.P.C. [Para 17].

Civil dispute bearing criminal elements - Supreme Court's view on concurrent civil and criminal proceedings [Para 19].

Court's conclusion that allegations warrant criminal proceedings, dismissal of application under Section 482 of Cr.P.C. [Paras 21, 22].

Referred Cases:

- State of Haryana and Others Vs. Bhajan Lal and Others, AIR 1992 SC 604
- State of Madhya Pradesh Vs. Rameshwar and Others, (2009) 11 SCC 424
- Dhanraj N Asawani Vs. Amarjeetsingh Mohindersingh Basi and others, Criminal Appeal No.2093/2023
- Meera Yadav vs. State of M.P. and others, W.P. No.9743/2022
- Amit Kapur vs. Ramesh Chander and Another, (2012) 9 SCC 460

ORDER

Gurpal Singh Ahluwalia, J. - By this common order, M.Cr.C. No.54865/2023 shall also be disposed of.

2. For the sake of convenience, facts of M.Cr.C. No.6453/2017 shall be considered.

3. This application under Section 482 of Cr.P.C. has been filed for quashment of order dated 20/08/2016 passed by JMFC Bhopal in R.T. No.9060/2016, by

which cognizance of offence under Sections 420, 409, 467, 120-B of IPC has been taken.

4. It is submitted by counsel for the applicant that a Society in the name & style of Chanakya Kautilya Sansthan Samiti Indore was constituted vide order dated 29/11/2006. It is submitted that with passage of time many new members were inducted and many old members resigned. In the month of August, 2012, Shri Anshuman Tiwari was appointed as CEO of the College and thereafter he was nominated as a Member of Society and on 31/10/2013, he was nominated as President of the Society and information was also given to Registrar, Firms & Society under Section 27 of Society Registrarian Adhiniyam. Vide order dated 22/02/2013, Shri Awadesh Narayan Tiwari (present applicant), Shri Vijay Gatam, Shri Shishir Khare, Shri Anshuman Tiwari, Shri Rishi Kumar Singh and Smt. Richa Singh pledged their properties as collateral security with regard to the loan taken by the Society from State Bank of India. Information was given to the Registrar Firms and Society mentioning that Shri Shishir Khare (President), Shri Kamlesh Tiwari (Vice-President), Smt. Richa Singh (Secretary), Shri Nikhil Kumar (Treasurer), Smt. Nanda Khare (Member), Shri Keshav Vishwakarma (Member) and Shri S. Ahmed Saiyed (Member), have been nominated. On 08/01/2014, Mrs. Richa Singh filed a civil suit against Anshuman Tiwari, Smt. Pinki Jatav, Shri Ashish Rai, Shri Roshan Pandey and Shri Adityanath Jha claiming relief for declaration and permanent injunction to declare that defendants No.1 to 5 have no right to run the College or to interfere in the administrative work of the College. General body meeting held on 23/11/2013 be declared as Legal Body valid, having right to govern the College, defendants No.1 to 5 be permanently restrained in interfering in the working of the College and not to alienate the property of the Society. An application under Order 39 Rule 1 & 2 of CPC was also filed. However by order dated 13/03/2015, application filed under Order 39 Rule 1 & 2 of CPC was rejected. Thereafter Smt. Richa Singh filed an application under Section 190 r/w 156(3) of CrPC against Anshuman Tiwari, Ashish Rai, Amit Dhamangaonkar, Pushyamitra Mishra and prayed for registration of offence under Sections 420, 409, 467, 471, 506, 120-B, 34 of IPC and accordingly, by order dated 04/02/2014 an order under Section 156(3) of Cr.P.C. was passed. Vide order dated 15/07/2014, Registrar Firms & Society directed for furnishing the list of registered members of the Society from the Office of Assistant Registrar Firms & Society, Indore, who by its letter dated 17/07/2014 gave a detailed reply to the acts underwent in the society and further informed that Shishir Khare has already resigned and dispute has

arisen after induction of Anshuman Tiwari and Smt. Richa Singh and also that the membership was not provided by validly elected committee. Appeal under Section 40 of Society Registrarian Adhiniyam was preferred by Shishir Khare and Anshuman Tiwari against the aforesaid order dated 17/07/2014 and both the appeals were decided by Registrar of Society at Bhopal thereby dismissing the appeals holding that enquiry into the registration/ validity of the members of the Society is in progress as per provisions of Section 32 of the Society Registrarian Adhiniyam and only thereafter clear position will emerge. On 01/08/2014, applicant preferred a complaint under Section 138 of Negotiable Instruments Act against the daughter of the respondent on the allegation that a cheque of Rs. 25,00,000/- was bounced and that case is under progress. Thereafter on 21/10/2015, an application under Section 156(3) of Cr.P.C. was submitted before the Trial Court by respondent for registration of offence under Sections 409, 420, 467, 468, 471, 120-B, 506 of IPC seeking a direction to the Police to investigate the matter. However, by order dated 21/01/2015, the Magistrate rejected the application filed under Section 156(3) of Cr.P.C. and directed the complainant to examine himself as well as his witnesses. Accordingly, complainant examined himself on 27/02/2015 and examined Snikhdha Singh and Ashutosh Dubey under Section 202 of Cr.P.C. However, by ignoring the fact that matter is already pending and complaint was filed with malafide intention to wreak vengeance on account of filing of complaint under Section 138 of NI Act against daughter of the respondent, the Trial Court has taken cognizance of the complaint. Accordingly, said order has been challenged before this Court.

5. Challenging the order passed by Court below, it is submitted by counsel for the applicant that there is no sufficient ground to take cognizance of the complaint. In fact only an application under Section 156(3) of Cr.P.C. was filed, and therefore, Court below after rejecting the application filed under Section 156(3) of Cr.P.C. should not have proceeded further thereby directing the complainant to examine himself and his witnesses. It is further submitted that injunction application filed by Smt. Richa Singh was rejected. However, counsel for applicant was not in a position to make a statement as to whether said order by which injunction application was rejected was ever challenged or not. It is further submitted that even Richa Singh had filed a complaint but in that case applicant was not an accused, therefore charge-sheet has not been filed against the applicant. It is submitted that if members of Society have not submitted the details of the accounts, then the person has a remedy under the Civil law by filing a Civil Suit for rendition of account and it is well

established principle of law that civil dispute should not be given the colour of criminal case. It is further submitted that the allegations made in the complaint are subject to investigation and same cannot be relied upon to take cognizance. It is further submitted that complaint is nothing but it is a by-product of malafides, therefore it is bad in the light of judgment passed by Supreme Court in the case of **State of Haryana and Others Vs. Bhajan Lal and Others reported in AIR 1992 SC 604**. It is further submitted that applicant is aged about 80 years and his prosecution at his advance age is unwarranted.

6. Per contra, application is vehemently opposed by counsel for the respondent.

7. Considered the submissions made by counsel for the parties.

8. The complainant has filed a complaint against Anshuman Tiwari, Awadesh Narayan Tiwari, Smt. Preeti Mishra, Adityanath Jha and Pushyamitra Mishra on the allegation that Chanakya Kautilya Educational Institute is a Society registered under Society Registrikaran Adhinyam. Society was constituted in the year 2006 and its primary object was to work in the field of education as well as to construct a College. The complainant Shishir Khare was elected as member on 14/02/2011 and was elected as Secretary by the General Body meeting held on 02/05/2012 and in the General Body meeting 22/11/2013 he was elected as a President. Information of his election as President was also communicated to the Registrar. Thereafter in the month of August, 2012 Anshuman Tiwari along with some goons took possession of one room of the College and started claiming that he is the CEO of College. When the appointment order was demanded then he refused and alleged that he has been appointed by Shri Vijay Gautam, who is the Chairman and also informed that the College would be run as per his dictates and forcibly took possession of the property of the Society. He was accompanied by Smt. Usha Mishra, Pushyamitra Mishra, Smt. Preeti Mishra, Shri Awadesh Narayan Tiwari and Adityanath Jha. On the basis of forged and concocted documents, Anshuman Tiwari and his colleagues got their signatures attested in the bank account of the Society, whereas it can be done only by the Managing Committee. The Authority to convene the meeting of Managing Committee is with the Secretary but Secretary Smt. Richa Singh had never called any such meeting and no such resolution to the effect that accounts of the Society will be operated with the signatures of Anshuman Tiwari was ever passed. However, by forcibly taking possession of the property in dispute, Anshuman Tiwari

started withdrawing money. It was pleaded that from 01/06/2012 to 05/11/2013 Anshuman Tiwari, Smt. Usha Mishra, Pushyamitra Mishra, Smt. Preeti Mishra, Shri Awadesh Narayan Tiwari and Adityanath Jha have withdrawn an amount of Rs.1,43,14,000/- belonging to the Society and has embezzled the same and details of the said amount has not been given. After coming to know about the said embezzlement, the Society has declared the signatures of Anshuman Tiwari as illegal and also freezed the bank account of the Society so that illegal withdrawal cannot take place. For running of the vehicles belonging to the Society, fuel was being supplied by Petrol Pump operated by Police Wefare Committee and fuel could have been supplied only on the basis of coupon issued by competent Authority of the Committee. For that purposes also Awadesh Narayan Tiwari and Anshuman Tiwari in connivance with his colleagues has prepared the forged documents and got their signatures verified and distributed the coupons to various persons including their relatives and by misusing the coupons have misappropriated the fuel worth Rs.2,00,000/-. Even the supply of fuel on the basis of coupon signed by Anshuman Tiwari was stopped and a complaint was also made to Police Headquarter. When Society started taking action against Anshuman Tiwari and his colleagues then they started acting illegally and they parked all the vehicles of the Society in the house of Awadesh Narayan Tiwari. The buses were utilized for election purposes. The complaint was made and an enquiry was also done by the Returning officer and ultimately buses were returned back. However Tyres of the buses were changed with the old tyres and battery were also changed and accordingly, an amount of Rs. 90,000/- was misappropriated. Only because of criminal activities of the accused persons, the College was closed, as a result career of the children also come at stake. Lot of students studying in the college could not succeed and accordingly, resignation of Anshuman Tiwari was taken and by creating an ante-dated minutes of the meeting Anshuman Tiwari, his friends Roshan Pandey, Pinki Jatav, Kamlesh Jatav, Ashish Rai and Adityanath Jha were made members on the basis of concocted documents whereas no information of such meeting was ever given to Secretary Smt. Richa, Vishal Yadav, Shishir Khare as well as Nanda Khare. Further instances of misappropriation of funds were also given in the complaint. It was alleged that Awadesh Narayan Tiwari in connivance with Anshuman Tiwari utilized the stolen cheques of Aditi Khare and filed an application under Section 138 of NI Act. They became the guarantor in order to capture the property of the Society. An amount of Rs.4,95,000/- was withdrawn on 20/06/2013 in the name of

Adiyanath Jha without any requirement and thus that amount was also misappropriated. Again the signatures of Anshuman Tiwari was got attested and they have started operating the account. An amount of Rs.50,000/-, Rs.99,679/-, Rs.20,000/-, Rs. 1,26,000/-, Rs. 2,00,000/-, Rs. 1,00,000/-, Rs.1,20,000/- were withdrawn by different cheques on different dates and the said amount was misappropriated. Similarly, an amount of Rs. 38,000/-, Rs. 38,000/-, Rs. 7,000/-, Rs. 10,000/-, Rs.8,000/-and in all Rs. 6,78,679/- have been misappropriated. It was further alleged that total amount of Rs. 2,23,49,679/- has been wrongly withdrawn in the name of fake persons and the same has been misappropriated. Even an amount of Rs. 9,20,745/- out of fees of the student has been misappropriated. Money was also collected for the purposes of purchasing Laptop for the students and almost the entire money i.e. Rs. 12,00,000/- was misappropriated and laptops were not given. The complainant is being threatened again and again and thus, the complaint was filed.

9. It is the contention of the counsel for the applicant that since the resignation of the complainant was already accepted, therefore he has no locus to file the complaint.

10. It appears that Registrar Firms and Societies by order dated 06/05/2015 passed in Appeal No.A-29/2014 and A-23/2014 preferred by Anshuman Tiwari and Shri Shishir Khare respectively, has dismissed both the appeals and the order dated 17/07/2014 passed by Assistant Registrar, Firms and Societies, Indore Division Indore has been affirmed. By order dated 17/07/2014, the Assistant Registrar, Firms and Societies has observed as under:-

“उपरोक्तानुसार कार्यालय में प्रस्तुत की गयी धारा 27 की जानकारीयों के परीक्षण करने पर पाया गया कि एक ही संस्था की एक ही वर्ष में कई अध्यक्ष, एवं सचिव के द्वारा कार्यकारिणी की पृथक-पृथक जानकारी

कार्यालय में प्रस्तुत की गयी। जहाँ तक मध्यप्रदेश सोसायटी रजिस्ट्रेशन अधिनियम 1973 के तहत पंजीकृत संस्था एवं संस्था द्वारा संचालित इकाइयों के रोजमर्रा के कार्य करने हेतु एक प्रबंधकारिणी समिति के पदाधिकारियों का चुनाव संस्था के पंजीकृत विधान के अनुसार बहुमत के आधार पर किये जाने का प्रावधान है।

उपरोक्त के साथ ही संस्था में संस्था के किसी सदस्य अथवा पदाधिकारियों के मध्य किसी तरह का कोई मतभेद या विवाद उत्पन्न होता है तो संस्था के प्रबंधकार्यकारिणी समिति या साधारण सभा में विवाद को बहुमत के आधार पर सुलझाये जाने हेतु विधान में प्रावधान है। किन्तु उक्त संस्था के तथाकथित अध्यक्ष, सचिव एवं तथाकथित सदस्यों के मध्य यदि कोई विवाद या मतभेद था, तो उपरोक्तानुसार प्रावधान के अनुसार मतभेद अथवा विवाद को संस्था के प्रबंधकारिणी अथवा साधारण सभा में ले जाकर विवाद का हल करना चाहिये था न कि अपने अपने स्तर पर विवादित व्यक्तियों के द्वारा समानान्तर कार्यकारिणी का गठन करना। उक्त संस्था में आहुत साधारण सभाओं में पंजीयन के पश्चात् से ही प्रस्तुत धारा 27 के साथ साधारण सभा, कार्यवाही बैठको के अवलोकन से यह स्पष्ट होता है कि हर साधारण सभा में पुराने सदस्यों के त्याग पत्रों को स्वीकार करने व नये सदस्यों को कार्यकारिणी द्वारा सदस्यता प्रदान की गयी की, पुष्टि किये जाने का उल्लेख है किन्तु साधारण सभा की बैठकों में कार्यकारिणी के द्वारा किस व्यक्ति के द्वारा संस्था की कौन सी श्रेणी की सदस्यता के लिये त्याग पत्र दिया गया, एवं संस्था की सदस्यता प्राप्त करने हेतु

किस व्यक्ति द्वारा संस्था की कौन सी श्रेणी की सदस्यता हेतु कार्यकारिणी के समक्ष आवेदन दिया गया तथा किस दिनांक को आहुत प्रबंधकार्यकारिणी समिति की बैठक में सदस्यता समाप्ति हेतु त्याग पत्र स्वीकृत किया गया व किस व्यक्ति को संस्था की कौन सी श्रेणी की सदस्यता प्रदान की गयी, का उल्लेख साधारण सभा की बैठकों में नहीं किया गया है तथा जिस साधारण सभा में सदस्यता प्रदान करने की पुष्टि की गयी उसी साधारण सभा की बैठक में उस व्यक्ति को अध्यक्ष, सचिव या कोषाध्यक्ष

बना दिया गया इससे भी यह स्पष्ट है कि संस्था द्वारा तथा कथित रूप से संस्था के पंजीकृत बायलाज के विरुद्ध संस्था के सदस्य बनाकर तत्काल संस्था के अध्यक्ष, सचिव बनाया जाना एक षडयंत्र पूर्वक तथा कूटरचित कृत्य की श्रेणी में आता है। उपरोक्त के साथ ही संस्था के जिन व्यक्तियों द्वारा त्यागपत्र दिये जा चुके थे, वही व्यक्ति को विवाद उत्पन्न होने की स्थिति में अध्यक्ष/सचिव या समिति के अन्य पद पर पुनः निर्वाचित किये जाने की जानकारी अधिनियम की धारा 27 के तहत प्रस्तुत की गयी है। जब कोई व्यक्ति अपने पारिवारिक कारणों से त्याग पत्र दे देता है तो उक्त स्थिति में पुनः विवाद की स्थिति में समिति के अध्यक्ष, सचिव या अन्य पदाधिकारी कैसे निर्वाचित हो सकता है। उपरोक्त के साथ ही संस्था की धारा 27 के तहत कई समानान्तर पदाधिकारियों की सूची प्रस्तुत की गयी है, जिसमें से यदि कोई व्यक्ति संस्था के आर्थिक अनियमितताओं में यदि दोषी पाया जाता है, तो ऐसी स्थिति में उनके विरुद्ध प्रस्तुत किये गये पदाधिकारियों की सूची को उक्त आधार पर विधिअनुसार नहीं माना जा सकता है। यहाँ यह भी उल्लेखनीय है कि श्रीमती ऋचासिंह, श्री अंशुमन तिवारी, श्रीमती नंदा खरे, ये विवाद के पूर्व कभी भी संस्था में सदस्य के रूप में कार्यालय में प्राप्त रेकार्ड के अनुसार नहीं रहे हैं, जबकि श्री शिशिर खरे द्वारा संस्था से त्याग पत्र दिया जा चुका

है। संस्था में विवाद श्रीमती ऋचासिंह एवं श्री अंशुमन तिवारी के आने के बाद ही उत्पन्न हुआ। चूँकि धारा 27 के तहत जो भी समानान्तर जानकारी प्रस्तुत की गयी वह संस्था के विनियमन के अनुसार नहीं है, क्योंकि संस्था के द्वारा कभी भी अपने पंजीकृत विधान के अनुसार वैद्य कमेटी के द्वारा सदस्यों को सदस्यता प्रदान नहीं की गयी। अतः अवैद्य सदस्यों के मध्य से निर्वाचित पदाधिकारियों की सूची को प्रमाणित कर प्रदाय किया जाना संभव नहीं है। क्योंकि प्रत्येक समानान्तर कमेटी द्वारा पृथक पृथक सदस्य बनाकर चुनाव कराये गये जो कि अवैधानिक हैं।

उक्त संस्था द्वारा पंजीयन दिनांक से आज दिनांक तक संस्था के पंजीकृत विनियमों के अनुसार जानकारी प्रस्तुत नहीं की गयी है, जिसके संबंध में

संस्था को समय समय पर सूचित किया गया है। उपरोक्त कारणों से संस्था को आज दिनांक तक कभी भी कार्यालय द्वारा पदाधिकारियों को प्रमाणित सूची प्रदाय नहीं की गयी। अतः उपरोक्त कारणों से भिन्न भिन्न पक्षों द्वारा गठित करके प्रस्तुत की गयी पदाधिकारियों की सूची को निरस्त किया जाता है। अतः संस्था में वर्तमान में कोई भी पक्ष द्वारा प्रस्तुत प्रबंधकारिणी पदाधिकारियों की सूची में अंकित पदाधिकारी विधिनुसार होना नहीं पाया गया।”

11. Therefore, it is clear that all the bodies which were constituted by different office bearers were cancelled by the Assistant Registrar, Firms and Societies.

12. Under these circumstances, it cannot be said that either Anshuman Tiwari or Shishir Khare are competent office bearers/ President of the Society. Both of them cannot act in detriment to the interest of the Society.

13. So far as the locus of the complainant to file the complaint is concerned, it is well established principle of law that any person can set the criminal agency in motion. It is not necessary that only an office bearer can point out the illegalities and misappropriations committed by the office bearers. Even otherwise, Supreme Court in the case of **State of Madhya Pradesh Vs. Rameshwar and Others reported in (2009) 11 SCC 424** has held as under:-

"48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

14. The Supreme Court in the case of **Dhanraj N Asawani Vs. Amarjeetsingh Mohindersingh Basi and others decided on 25.07.2023 in Criminal Appeal No.2093/2023** has held as under:

"15. Section 4 of the CrPC provides that all offences under the IPC shall be investigated, inquired, and tried according to the provisions of the CrPC. Section 4(2) structures the application of the CrPC in situations where a special procedure is prescribed under any special enactment. Section 4 is extracted below:

4. Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

16. Section 4(2) lays down that the provisions of the CrPC shall apply to all offences under any other law apart from the IPC. However, the application of the CrPC will be excluded only where a special law prescribes special

procedures to deal with the investigation, inquiry, or the trial of the special offence.

For instance, in **Mirza Iqbal Hussain v. State of Uttar Pradesh**, this Court was called upon to determine whether the trial court had jurisdiction to pass an order of confiscation under the Prevention of Corruption Act, 1947. This Court held that the provisions of the CrPC would apply in full force because the Prevention of Corruption Act, 1947 did not provide for confiscation or prescribed any mode by which an order of confiscation could be made. Therefore, it was held that a court trying an offence under the Prevention of Corruption Act, 1947 was empowered to pass an order of confiscation in view of Section 452 of the CrPC. In determining whether a special procedure will override the general procedure laid down under the CrPC, the courts have to ascertain whether the special law excludes, either specifically or by necessary implication, the application of the provisions of the CrPC.

17. The CrPC provides the method for conducting investigation, inquiry, and trial with the ultimate objective of determining the guilt of the accused in terms of the substantive law. The criminal proceedings kick in when the information of the commission of an offence is provided to the police or the magistrate. Section 154 of the CrPC details the procedure for recording the first information in relation to the commission of a cognizable offence. It provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by them or under their direction. The information provided by the informant is known as the FIR.

18. In **Lalita Kumari v. Government of U.P.**, a Constitution Bench of this Court held that the main object of an FIR from the point of the view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity to take suitable steps to trace and punish the guilty. The criminal proceedings are initiated in the interests of the public to apprehend and punish the guilty. It is a well settled principle of law that absent a specific bar or exception contained in a statutory provision, the criminal law can be set into motion by any individual.

19. In **A.R Antulay v. Ramdas Srinivas Nayak**, a Constitution Bench of this Court held that the concept of locus standi of the complainant is not recognized in the criminal jurisprudence, except in situations where the

statute creating an offence provides for the eligibility of the complainant. The Court observed that the right to initiate criminal proceedings cannot be whittled down because punishing an offender is in the interests of the society:

"This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [See Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."
(emphasis supplied)

20. The 1960 Act is a special law enacted to govern co-operative societies in Maharashtra. Section 81 of the 1960 Act casts a public duty on the auditor and the Registrar to audit co-operative societies. In pursuance of this objective, Section 81(5B) obligates them to register an FIR in case they discover any financial irregularities in the audit reports of a cooperative society. According to said provision, when the auditor comes to the conclusion in the audit report that any person is guilty of an offence relating to the accounts or of any other offences, they are mandated to file a specific report to the Registrar. Where the auditor has failed to do so, the Registrar is empowered to cause an FIR to be filed by a person authorized by them in that behalf. The statutory obligation is cast on the auditor and the Registrar because they are the first persons to acquire knowledge about the financial irregularities in a cooperative society in the course of conducting an audit. Since only the auditor and the Registrar are privy to such irregularity, the 1960 Act obligates them to bring the information about the financial irregularity to the knowledge of the police.

21. The respondents have relied on the decision of this Court in **Jamiruddin Ansari** (supra) to contend that the 1960 Act, being a special law, will prevail over the provisions of the CrPC. In **Jamiruddin Ansari** (supra) the issue before a two-Judge Bench of this Court was whether Section 23(2) of the Maharashtra Control of Organized Crime Act, 1999 excludes the application of Section 156(3) of the CrPC. The MCOCA is a special law enacted by the state legislature to prevent and control crimes by organized crime syndicates or gangs. Section 23 of MCOCA begins with a non-obstante clause. Section 23(2) provides that the special judge cannot take cognizance of any offence under the MCOCA without the previous sanction of a police officer not below the rank of the Additional Director General of Police. The relevant clause is extracted below:

23.(1) Notwithstanding anything contained in the Code,-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

22. In **Jamiruddin Ansari** (supra), this Court held that the provisions of the MCOCA will prevail over the provisions of the CrPC. The Court held that a Special Judge is precluded from taking cognizance of a private complaint and order a separate inquiry without the previous sanction of the police officer not below the rank of Additional Director General of Police:

67. We are also inclined to hold that in view of the provisions of Section 25 of MCOCA, the provisions of the said Act would have an overriding effect over the provisions of the Criminal Procedure Code and the learned Special Judge would not, therefore, be entitled to invoke the provisions of Section 156(3) CrPC for ordering a special inquiry on a private complaint and taking cognizance thereupon, without traversing the route indicated in Section 23 of MCOCA. In other words, even on a private complaint about the commission

of an offence of organised crime under MCOCA cognizance cannot be taken by the Special Judge without due compliance with sub-section (1) of Section 23, which starts with a non obstante clause.

23. In view of the stringent provisions of the MCOCA, Section 23 provides a procedural safeguard that no information of an offence alleged under the MCOCA shall be recorded without the prior approval of an officer below the rank of the Deputy Inspector General of Police. No investigation can be carried out by an officer below the rank of Deputy Superintendent of Police. Section 23(2) contains a specific bar against the taking of cognizance by a Special Judge without the previous sanction of a police officer not below the rank of Additional Director General of Police. In **Rangku Dutta v. State of Assam**, this Court interpreted the purport of Section 20-A(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, which was similar to Section 23 of the MCOCA. Section 20-A of the TADA is extracted below:

"20-A. Cognizance of offence.-(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police."

This Court held that the above provision was mandatory for two reasons: first, it commenced with an overriding clause; and second, it used the expression "No" to emphasize its mandatory nature. The Court observed that the use of the negative word "No" was intended to ensure that the provision is construed as mandatory.

24. Section 81(5B) of the Act casts a positive obligation on the auditor or the Registrar to file an FIR. It does not use any negative expression to prohibit persons other than the auditor or the Registrar from registering an FIR. Therefore, it would be contrary to basic principles of statutory construction to conclude that Section 81(5B) debars persons other than the auditor or the Registrar from filing an FIR. The ratio of the decision of this Court in **Jamiruddin Ansari** (supra) is predicated on a provision of law distinct from the statutory provision applicable to the present case.

25. Further reliance has been placed by the respondent on the decision of this Court in **Jeewan Kumar Raut** (supra) to contend that Section 81(5B) debars by necessary implication any person other than the auditor or the Registrar from filing an FIR. In that case, the issue before this Court was whether the provisions of the Transplantation of the Human Organs Act, 1994 barred the applicability of Section 167(2) of the CrPC pertaining to the grant of default bail. Section 22 of the TOHO Act prohibits taking of cognizance by courts except on a complaint made by an appropriate authority. This Court held that the TOHO Act is a special statute and will override the provisions of the CrPC so far as there is any conflict between the provisions of the two enactments. The Court further held that the police report filed by the CBI can only be considered as a complaint petition made by an appropriate authority under Section 22 of the TOHO Act. Therefore, the filing of a police report in terms of Section 173(2) of the CrPC was held to be forbidden by necessary implication. Since CBI could not file a police report under Section 173(2), Section 167(2) of the CrPC was also held to be not applicable.

26. Exclusion by necessary implication can be inferred from the language and the intent of a statute. In **Jeewan Kumar Raut** (supra), this Court looked at the words of the statute as well as the overall scheme of investigation under the CrPC to infer that Section 22 of the TOHO Act bars the applicability of Section 167(2) of the CrPC by necessary implication. In the present case, the 1960 Act casts a positive obligation on the auditor or the Registrar to file an FIR when they discover a financial irregularity in a co-operative society. Section 81(5B) demands accountability and vigilance from the auditor and the Registrar in performance of their public duty. Moreover, a plain reading of the said provision does not lead to the conclusion that the legislature intends to debar any person other than the auditor or the Registrar from registering an FIR. Section 81(5B) cannot be interpreted to mean that any other person who comes to know about the financial irregularity on the basis of the audit report is debarred from reporting the irregularity to the police. In the absence of any specific provision or necessary intendment, such an inference will be against the interests of the society. The interests of the society will be safeguarded if financial irregularities in co-operative banks are reported to the police, who can subsequently take effective actions to investigate crimes and protect the commercial interests of the members of the society. In view of the above discussion, it is not possible for us to infer that Section 81(5B) of the 1960 Act bars by necessary implication any person other than an auditor or the Registrar from setting the criminal law into motion.

27. From the narration of submissions before this Court, it appears that on 31 May 2021, the Minister in-charge of the Co-operative department has set aside the audit report while directing a fresh audit report for 2016-2017 and 2017-2018. The order of the Minister has been called into question in independent proceedings before the High Court. This Court has been apprised of the fact that the proceedings are being heard before a Single Judge of the High Court. The proceedings which have been instituted to challenge the order of the Minister will have no bearing on whether the investigation by the police on the FIR which has been filed by the appellant should be allowed to proceed. The police have an independent power and even duty under the CrPC to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. This power is not curtailed by the provisions of 1960 Act. There is no express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC.

28. The High Court has relied on the decision of this Court in *State of Haryana v. Bhajan Lal* to quash the FIR. In that case, this Court held that the High Court can exercise its powers under Article 226 of the Constitution or Section 482 of the CrPC to quash an FIR where there is an express legal bar engrafted in any provisions of a special law with respect to the institution and continuance of the proceedings. As held above, Section 81(5B) does not contain any express or implied bar against any person from setting the criminal law in motion.

29. In the circumstances, we are of the view that the High Court has erred in quashing the FIR which was lodged by the appellant. It is correct that the FIR adverted to the audit which was conducted in respect of the affairs of the co-operative society. However, once the criminal law is set into motion, it is the duty of the police to investigate into the alleged offence. This process cannot be interdicted by relying upon the provisions of sub-section (5B) which cast a duty on the auditor to lodge a first information report."

15. This Court in the case of **Meera Yadav vs. State of M.P. and others decided on 26.09.2023 in W.P. No.9743/2022** has held as under:

"16. Counsel for petitioner could not point out any provision of law, which expressly or impliedly bars the application of provisions of Cr.P.C. and IPC.

Merely because procedure has been provided under Section 89 and 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 for

recovery of the civil liability, it cannot be said that the provisions of Cr.P.C. and IPC have been ousted. For registration of FIR commission of cognizable offence is necessary and the locus of complainant so far as it relates to criminal jurisprudence is concerned has no relevance. Anybody can set criminal agency in motion. In absence of any bar under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 it cannot be said that the FIR could not have been lodged. Accordingly, the aforesaid contention is hereby rejected."

16. Thus, it is clear that where an act makes out an offence and in absence of any bar either under the Co-operative Societies Act or under the Society Registrikaran Adhiniyam, Magistrate shall have a jurisdiction to take cognizance of the complaint.

17. So far as the contention of the counsel for the applicant that since no complaint under Section 200 of Cr.P.C. was filed but merely an application under Section 156(3) of Cr.P.C. was filed, therefore Court below after rejecting the application under Section 156(3) of Cr.P.C. should not have proceeded further to record the statement of complainant under Section 200, 202 of Cr.P.C. is concerned, the same is misconceived. If the application under Section 156(3) of Cr.P.C. is rejected, then the only course available to the Magistrate is to proceed further with the complaint by recording statements of complainant and his witnesses under Sections 200, 202 of Cr.P.C., therefore it cannot be said that the procedure adopted by the Magistrate was incorrect.

18. So far as the submission that the complaint does not disclose the commission of criminal case and in fact the civil dispute has been given the colour of criminal case is concerned, the same is misconceived.

19. The Supreme Court in the case of **Amit Kapur vs. Ramesh Chander and Another reported in (2012) 9 SCC 460** has held that if allegation discloses the ingredients of civil dispute as well as ingredients of criminal dispute then it cannot be said that criminal action cannot be taken.

20. No other argument is advanced by counsel for the parties.

21. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference.

22. Application(s) fails and is/are hereby dismissed.

*Disclaimer: Always compare with the original copy of judgment from the official website.