

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2004

CORAM

THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO.20028 OF 2001

and W.P.Nos. 15079 & 46713 OF 2002,

19046, 19111, 19334, 21974, 22828, 23504, 24257, 24894, 25156,  
25206, 25258, 26029, 26347, 26348, 26349, 26350, 26968, 28262 of 2003

AND

W.P.M.P.NOS.29525 OF 2001, 20266 & 67883 OF 2002,

23903, 24147, 28223, 29872, 30603, 30604, 30911,

30912, 30972, 30973, 31024, 31025, 31885, 32233,

32235, 32953 AND 34537 OF 2003

W.P.NO.20028 OF 2001

V.S.Ramasubramaniam .. Petitioner

-Vs-

1. The State of Tamil Nadu,  
rep. by its Secretary to Govt.,  
Food, Co-operation Department,  
Fort St.George, Chennai-9.

2. The Registrar of Co-operative  
Societies,  
N.V.N.Maligai, Kilpauk,  
Chennai-600 010.

3. The Additional Registrar (M.P.D.),  
Office of the Registrar of Co-op.  
Societies, N.V.N.Maligai, Kilpauk,  
Chennai-10.

4. Thiru K.Jamal Mohamed  
Addl.Registrar/Zonal Officer  
for Madurai Region,  
Special Officer, Tamil Nadu Consumer  
Co-op.Federation Ltd.,  
Saligramam, Chennai-600 093.

5. The Joint Registrar of Co-operative  
Societies, Madurai Region,  
13, Kanaga Apartment,

Lady Dock College Road, Madurai-625 002.

6. The Deputy Registrar of Co-op.  
Societies, Madurai Circle  
Meenakshi Bhavanam, Tallakulam  
Madurai-625 002.

7. The Special Officer,  
Madurai Urban Co-op.Bank Ltd.,  
32, Naicken New St., Madurai-625 001.

8. The Secretary  
Madurai Urban Co-op.Bank Ltd.,  
32, Naicken New St., Madurai-625 001.

9. Thiru G.Alagarsamy,  
Co-op.Sub Registrar,  
Office of the Registrar of Co-op.Societies,  
Chennai-10. .. Respondents

Prayer: These Writ Petitions are filed under Article 226 of the  
Constitution of India, for the issuance of a Writ of Mandamus, Certiorari,  
etc. for the reliefs as stated therein respectively.

For Petitioner :: Mr.M.Venkatachalapathy, SC  
in W.P.No.20028 of 2001

Mr.M.Suresh Kumar  
in W.P.No.22828 of 2003

Mr.K.Alagirisami  
for Mr.T.Ravikumar  
in WP No.24257 of 2003  
Mr.S.Ravi for  
M/s.Hema Sampath  
M/s.R.Subramanian in  
W.P.Nos.19111,19334&46713/2002

Mr.K.Jegannathan in  
WP No.26347 & 26968 of 2003

Mr.T.S.Rajamohan in  
W.P.No.23504 of 2003

For Respondents :: Mr.R.Muthukumaraswamy,  
Addl.A.G. Assisted by  
Mr.M.S.Palanisamy, Spl.G.P.  
Mr.V.Perumal for R5 in  
W.P.No.15079 of 2003

Mr.P.S.Sivashanmughasundaram  
for R2 in WPNo.23504 of 2003&  
for R4 in WP No.22828 of 2003

:COMMON ORDER

All the above Writ Petitions are related to Madurai Urban Cooperative Bank Limited (hereinafter called "the Bank") and as such they were clubbed together and disposed of by this Common Order.

2. Writ Petition Nos.20028 of 2001, 15079 of 2002, 19046 of 2003, 2 8262 of 2003, 25156 of 2003 and 21974 of 2003 have been filed by one Thiru V.S.Ramasubramaniam, who was the Ex.President of the above said bank (hereinafter referred to as "the Ex.President").

3. Writ Petition Nos.22828 of 2003 and 24257 of 2003 have been filed by one Thiru P.Raju, who was the Ex.Director of the bank ( hereinafter referred to as "the Ex.Director").

4. Writ Petition Nos.23504, 26029 and 25206 of 2003 have been filed by one Thiru Mayan, who was the Secretary of the Bank (hereinafter referred to as "the Ex.Secretary"). He is now under suspension pending disciplinary action.

5. Writ Petition No.24894 of 2003 has been filed by one Thiru R. Venkatasamy, who was the Ex.Vice President of the Bank, (hereinafter referred to as "the Ex.Vice President").

6. Writ Petition Nos.26347, 26348, 26349, 26350, 25258 and 26968 of 2003 have been filed by M/s.Perumal, A.Anbarasan, P.Rathinam, N.Abu Becker Siddique, N.Karnan and M.Sakthivel respectively, who were the Employees of the Bank (hereinafter referred to as "the Ex.Employees").

7. Writ Petition Nos.19111 of 2003, 19334 of 2003 and 46713 of 2002 have been filed by M/s.C.Papa, Nagarajan, M.Veeraiah and Chithra respectively (who have borrowed funds from the Bank), for the issuance of a Writ of Mandamus, to direct the Registrar of Co-operative Societies to probe into the irregularities and fraudulent act of the petitioner in W.P.Nos.23504 of 2003, namely, Thiru M.Mayan who was the then Secretary of the Bank.

8. The Ex.President has filed W.P.No.20028 of 2001 challenging the proceedings dated 8-10-2001, by which an enquiry has been ordered under Section 81 of the Tamil Nadu Co-operative Societies Act ( hereinafter referred to as "the Act") as to the affairs relating to mismanagement of the bank and the said enquiry has been directed to be held by one Thiru Alagiriswamy, Registrar of Co-operative Societies in the Office of the Registrar. W.P.No.15079 of 2002 has been filed by the Ex.President for the issuance of a Writ of Certiorari, challenging the proceedings of the Registrar dated 15-4-2002, in and by which, a discreet enquiry was directed to be made by his sub-ordinates with reference to the advancement of loans to a tune of Rs.2 lakhs and above from 1-12-1996 onwards by the Bank and to submit a report.

9. Writ Petition Nos.19046 and 22828 of 2003 have been filed by the Ex.President as well as the Ex.Director, challenging the proceedings of the Joint Registrar of Co-operative Societies, Madurai Region dated 27-5-2003, in and by which, the Ex.President and Ex.Director were called upon to show cause by virtue of the provisions contained in Section 36 of the Act for the

purpose of permanent disqualification.

10. Writ Petition No.28262 of 2003 has been filed by the Ex. President, challenging the proceedings of the Additional Registrar of Cooperative Societies, Chennai, dated 29-7-2003 ordering an inspection under Section 82 of the Act.

11. Writ Petition Nos.W.P.Nos.24257, 24894, 25156, 25206,25258,26347 ,26348,26349, 26350, and 26968 of 2003 have been filed by the Ex. President, Ex.Director, Ex.Secretary, Ex.Vice President and the the Ex. Employees of the Bank, challenging the F.I.R. in Cr.No.9 of 2003 dated 22-8-2003 on the file of the Inspector of Police, CCIW-CID, Madurai.

12. Writ Petition No.21974 of 2003 has been filed by the Ex. President, challenging the Enquiry Reports of the Officers who were directed to hold such an enquiry by the Registrar in his proceedings dated 15 -4-2002 and who have filed their report dated 31-10-2002.

13. Writ Petition No.23504 of 2003 has been filed by the Ex. Secretary, challenging the charge sheet cum show cause notice issued to him in respect of certain alleged misconduct committed by him in the course of discharge of his duties as Secretary of the Bank.

14. Writ Petition No.26029 of 2003 has been filed by the Ex. Secretary, challenging the order of the Deputy Registrar of Co-operative Societies dated 5-9-2003, in and by which, an order of attachment before judgment came to be made as against certain immovable properties of the Ex.Secretary pursuant to the application filed by the Bank before the Deputy Registrar, Madurai pending certain main proceedings.

15. All the above said reliefs claimed in the different Writ Petitions are as a sequel to allegations of mismanagement and other alleged corrupt practices of the Ex.President, Ex.Vice President, Ex. Director, Ex.Secretary and the Ex.Employees of the Bank in the course of their functioning as such in their different capacities during the period between 1-11-1996 and 25-5-2001.

16. The brief facts, which led to the filing of the above Writ Petitions, can be stated as under:

The Bank, which is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act came into existence some time in the year 1904, which is stated to have commenced its banking services from the year 1984 as approved by the Reserve Bank of India (in short, RBI). The elected Office Bearers, some of whom, have been referred to above, were stated to have functioned in different capacities between 1-11-1996 and 25-5-2001. It is stated that in the matter of appointment of employees, advancement of loans, such as, housing loans, business loans, etc., as well as the regular transactions of the bank, certain serious irregularities came to be noticed.

17. Be that as it may, by G.O.No.204 (Co-operation, Food and Consumer Protection Department) dated 25-5-2001, the tenure of the elected Board of Management came to be restricted and a Special Officer came to be appointed with effect from 25-5-2001. Accordingly, the Board of the Management Bank ceased to hold office with effect from 25-5-200 1 and the Bank came to be managed by the Special Officer with effect from the above said date.

18. It is further stated that the banking operations during the above said period was monitored by the RBI. As the banking transactions

of the bank were not satisfactorily carried out in the opinion of the RBI, inspections were carried out by the officials of the RBI and periodical reports came to be issued by the RBI on different dates between 23-3-2001 and 27-8-2003 and finally by the order dated 25-8-2003, the licence to carry on banking business in terms of Section 22 of the Banking Regulations Act 1949 (as applicable to Co-operative Societies) in respect of the bank came to be cancelled. In terms of the said order, the bank was directed not to carry on any business transactions as defined in Section 5(b) and (c) as well as Section 7 and 49A of the Banking Regulations Act 1949 (as applicable to the Cooperative Societies) including repayment of deposits forthwith.

19. That apart, earlier in December, 1998, an enquiry under Section 81 of the Act was ordered by the Deputy Registrar of Madurai in his proceedings dated 24-12-1998 pursuant to which, a report came to be made by the Co-operative Sub Registrar, Vigilance, Madurai pointing out certain irregularities. However, the report did not suggest any serious action against the Management. The report of the Co-operative Sub Registrar was dated 7-4-1999. Subsequently, another enquiry was also ordered under Section 81 of the Act which came to be withdrawn by the Deputy Registrar of Madurai Region himself in his proceedings dated 23-10-2000.

20. In the above stated circumstances, when by the proceedings dated 8-10-2001, the Registrar of Co-operative Societies, Chennai ( hereinafter called "the Registrar, Chennai") ordered for an enquiry under Section 81 of the Act, the Ex.President came forward with the Writ Petition in W.P.No.20028 of 2001, challenging the said proceedings.

21. As the allegation of mismanagement of the affairs of the bank was always brooding, the Registrar is stated to have issued a fresh proceedings dated 15-4-2002, calling upon four of his subordinates to hold a discreet enquiry in regard to the loans advanced by the Bank to the tune of Rs.2 lakhs and above after 1-12-1996 and submit a factual report. In fact, it was the said proceedings dated 15-4-2002 which has been challenged by the Ex.President in W.P.No.15079 of 2002. It will have to be stated that the very same proceedings were under challenge in W.P.No.15789 of 2002 by the Ex.Director, which Writ Petition came to be disposed of by His Lordship Mr.Justice E.Padmanabhan on 20-9-2002 holding that it was only a general investigation sought to be made as to the various loans advanced and that before taking any statutory action either under Section 80 or 81 of the Act, there would be every necessity to give proper opportunity to the concerned persons and therefore, there was no scope to interfere with the enquiry ordered by the Registrar, Co-operative Societies, Chennai in his proceedings dated 15-4-2002. Therefore, as far as the above said order of the Hon<sup>ble</sup> Mr.Justice E.Padmanabhan in W.P.No.15789 of 2002 dated 20 -9-2002 is concerned, though it is stated that a Writ Appeal has been preferred, the same has not so far been moved for admission. However, as on date, the issue involved in W.P.No.15079 of 2002 is squarely covered by the order dated 20-9-2002 made in W.P.No.15789 of 2002. I, therefore, feel that there is no point in probing anything further into the said Writ Petition which is covered by the said order dated 20-9-2002 in W.P.No.15789 of 2002 and following the said order, the Writ Petition in W.P.No.15079 of 2002 is liable to be dismissed.

22. After the proceedings dated 15-4-2002, the concerned officials who were directed to make certain enquiries as regards the loans

advanced by the Bank to the tune of Rs.2 lakhs and above, the team of officials have completed their task and filed the report dated 31-10-20 02. It is the said report which has triggered further probe into the various aspects relating to allegation of corrupt practice and mismanagement in respect of the affairs of the bank by the Ex.Office Bearers as well as Ex.Employees of the bank. In fact, as a sequel to the said report dated 31-10-2002, it is stated that while on the one hand, the F.I.R. came to be registered on 22-8-2003 in Cr.No.9 of 2003 on the file of the Inspector of Police, CCIW-CID, Madurai, a regular enquiry has also been in the anvil to be held under Section 81 of the Act apart from inspection ordered under Section 82 of the Act. The Ex.Office Bearers and the Employees have therefore come forward with the present Writ Petitions, seeking to thwart the initiation of any enquiry under Section 81 of the Act and also the quashing of the FIR itself for various grounds urged in their respective Writ Petitions.

23. As far as Writ Petition Nos.19111 and 19334 of 2003 and 46713 of 2002 are concerned, the respective petitioners therein claim that their names were misused by the Ex.Office Bearers and Ex.Employees of the bank with the assistance of some real estate agents, who according to the petitioners, misappropriated the funds of the bank while at the same time, the liability for repayment has been fastened on these petitioners. The petitioners in the above Writ Petitions, therefore, while seeking for the appropriate action against the Ex.Office Bearers, Ex.Employees and the concerned real estate agents want to get themselves freed from any monetary liability to the bank.

24. In the above stated background, the contentions raised by Mr. Venkatachalapathy, learned Senior counsel on behalf of the Ex.Office Bearers and Ex.Employees of the bank, are that the allegations of mismanagement and misuse of the funds of the bank were repeatedly made from the year 1998; that on more than one occasion, such allegations ripened into the form of an enquiry under Section 81 of the Act, in which, it has been categorically reported that there was no basis for any fraudulent transaction in the matter of either advancement of loans or mal-administration of the affairs of the bank and in the circumstances, there is no scope for repeatedly invoking Sections 81 or 82 of the Act which is now attempted to be done solely with a view to malign the petitioners. It is also contended that when the allegation of mismanagement or corrupt practice or mal-administration of the bank having been found to be not established in the enquiry already initiated under Section 81 of the Act, there was no justification or legal sanction for the issuance of notice for permanent disqualification under Section 36 of the Act. As far as the legality of criminal prosecution in the form of FIR was concerned, it is contended that under Section 164(3) of the Act, no prosecution can be initiated without the previous sanction of the Registrar of Co-operatives and in the circumstances, the Registration of FIR is hit by the said statutory requirement and therefore, the same is liable to be set aside.

Reliance was placed upon the judgments reported in 2001(4) CTC 339 (N.VARADARAJAN ( CO-OPERATIVE SUB-REGISTRAR), SPECIAL OFFICER, SALEM CO-OPERATIVE HOUSING SOCIETY LTD., SALEM versus STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNMENT, CO-OPERATION, FOOD AND CONSUMER PROTECTION DEPARTMENT, MADRAS-9 AND TWO OTHERS); AIR 1999 Madras 254 (ARIGNAR ANNA WEAVERS CO-OPERATIVE SOCIETY LTD. Versus STATE OF TAMIL NADU AND OTHERS); 1971 SC 1447; 2000 Wr.LR 517; 1979(1) MLJ 6 (M.KUNJITHAPATHAM AND OTHERS

versus THE THIRUVILAIYATTAM VILLAGE CO-OPERATIVE AGRICULTURAL CREDIT SOCIETY ZB-95, BY ITS SECRETARY, THIRUVILAIYATTAM AND ANOTHER); 1 978(1) MLJ 284 (S.VENKATARAMAN versus THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES, THANJAVUR AND OTHERS); AIR 1991 SC 1117 (K.R.DEB versus THE COLLECTOR OF CENTRAL EXCISE, SHILLONG) and 2003(1) TNLJ 321 (TVL.RAJESH MOTORS, CHENNAI versus THE COMMERCIAL TAX OFFICER, CHENNAI)

25. As regards the challenge to the criminal prosecution, which is now at the stage of registration of the FIR in Cr.No.9 of 2003, the contention raised on behalf of the petitioners by Mr.K.Alagiri Swamy, learned senior counsel is that when the informal report of the officials of the Registrar of the Societies, Chennai dated 31-10-2002 was the basis and when the Act is a self contained code, the prosecution could only be made under Section 162 of the Act. Further, according to the learned Senior counsel, when there is no scope to invoke the general penal provisions of the Indian Penal Code, by virtue of Section 162 of the Act, in the absence of compliance of Section 164(3) of the Act, the FIR cannot stand. The learned Senior counsel further contended that even going by the report, which was the basis for the present complaint, where there was no specific allegation found in the report dated 31-10-2002 as against the petitioners in W.P.Nos.28262, 2425 7, 24894, 25156, 24257, 25206, 24894, 26347, 26348, 26349, 26350, 252 58 and 26968 of 2003, the FIR could not have been registered and on this ground as well, the same was liable to be quashed. Reliance was also placed upon the order of Mr.Justice Malai.Subramanian dated 8-1 -2003 in CrI.M.P.No12756 of 2002 as well as AIR 2000 SCW 698 (STATE OF MAHARASHTRA versus LALJIT RASHI SHAH AND OTHERS) and also AIR 1998 SC 128 (PEPSI FOOD LIMITED AND ANOTHER versus SPECIAL JUDICIAL MAGISTRATE AND OTHERS). Reliance was also placed upon the judgments reported in 1990 MLJ (CrI.) 529(K.SOMASUNDARAM versus STATE BY INSPECTOR OF POLICE, COIMBATORE) 1998 (I) LW (CrI.) 315 (PARIVALLAL AND ANOTHER versus SUB INSPECTOR OF POLICE, SATHANUR DAM) and AIR 1985 SC 1665 ( RAMESH BALKRISHNA KULKARNI versus STATE OF MAHARASHTRA) apart from 1993 (1) SCC 302.(STATE OF MADYA PRADESH versus AJAY SINGH AND OTHERS, ETC.,)

26. Mr.M.Venkatachalapathy, learned Senior counsel appearing for some of the petitioners, contended that FIR in verbatim contains the report dated 31-10-2002, and the said report is not a statutory report and in the circumstances when the petitioners are not public servants, the registration of the crime for the various offences including Section 409 IPC which is relatable to a public servant, cannot be maintained. The learned senior counsel placed reliance upon 1990 MLJ ( CrI.) 529, 1998(1) LW (CrI.) 315 and AIR 1985 SC 1665 (cited supra).

27. As against the above said submissions, the learned Additional Advocate General, at the out set, contended that the report dated 31-10-2002 is only a fact finding report, that a perusal of the FIR would disclose that it came to be registered based on the complaint against the various individuals including the petitioners and therefore, merely because, the report dated 31-10-2002 did not specifically refer to the names of the Ex-Office Bearers or some of the Ex-Employees, it cannot be held that there was no scope to proceed against the petitioners based on the FIR registered in Cr.No.9 of 2003.

28. As regards the contention that the Act is a self-contained code and therefore, any criminal proceedings could be only under Section 162 read along with Section 163 and 164 of the Act, the learned

Additional Advocate General, by referring to the very same judgment relied upon by the learned senior counsel for the petitioners in "AIR 2000 SCW 698 (STATE OF MAHARASHTRA versus LALJIT RASHI SHAH AND OTHERS)", contended that in that very judgment, the said argument came to be repelled. According to the Additional Advocate General, the requirements of Sections 162 and 163 of the Act is referable to the offences only under that Act and same will have no application when the petitioners are proceeded under the general criminal law.

29. Alternatively, the Additional Advocate General contended that at best it can only be contended that they could not be proceeded against under both the enactments by virtue of Section 26 of the General Clauses Act. The learned Additional Advocate General relied upon AIR 1957 Orissa 165 (STATE versus BANCHHANIDHI MEHAR); AIR 1968 Bombay 1 24 (WAMAN SAMBHAJI DUKA versus NARHARI SAMBHAJIRAO PHATALE); AIR 196 5 SC 87 (MANIPUR ADMINISTRATION, MANIPUR versus THOKCHOM BIRA SINGH); AIR 1989 SC 1 (STATE OF BIHAR versus MURAD ALI KHAN & OTHERS) and AIR 1967 SC 170.(CHANDRIKA SAO AND ANOTHER versus STATE OF BIHAR). As far as the order dated 8-1-2003 of Mr. Justice Malai. Subramanian in CrI.O.P.No.12756 of 2002, according to the learned Additional Advocate General, the said judgment is per incurium in the light of the fact that the learned Judge failed to take note of Section 26 of the General Clauses Act and also the fact that there is already a ruling of this Court contrary to what has been held by the learned Judge, apart from the fact that the said view of the learned Judge is contrary to the legal position settled by the Hon'ble Supreme Court reported in AIR 1967 SC 170 as well as AIR 2000 SCW 698 (cited supra). In any event, according to the learned Additional Advocate General, when the FIR cannot be correlated to the report dated 31-10-2002 but also to other materials which weighed with the complainant while preferring the complaint dated 25-7-2003 such as various statements collected by the complainant from different individuals, it cannot be held that the FIR was lacking in material particulars as against the petitioners in order to interfere with the same at this stage. The learned Additional Advocate General took pains to point out that while considering the scope of interference either under Section 482 of Cr.P.C. or in a Writ Petition under Article 226 of the Constitution in relation to the quashing of a FIR, the Hon'ble Supreme Court has pointed out that the Courts should be slow and only under extraordinary circumstances, such interference can be resorted to. The learned Additional Advocate General also referred to the preliminary report of the Sub Registrar of Co-operative Society which held an inspection under Section 82 of the Act to point out that the petitioners exceeded their limits while functioning as Office Bearers and as Employees of the Bank in the matter of handling the funds of the Bank and therefore, no interference should be made at this stage and that the law should be allowed to take its own course to find out who is responsible for the malfunctioning of the bank whose licence for banking operations came to be cancelled by the RBI for its mal-functioning. In support of his submissions, the learned Additional Advocate General also relied upon AIR 1992 SC 604 (STATE OF HARYANA & OTHERS versus CH.BHAJAN LAL AND OTHERS), AIR 1999 SC 1044 (STATE OF KERALA AND OTHERS versus O.C.KUTTAN & OTHERS); AIR 2000 SC 202 (MANOHAR M.GALANI Versus ASHOK N.ADVANI & ANOTHER) and 2003(4) Supreme 466 (UNION OF INDIA versus PRAKASH P. HINDUJA & ANOTHER).

30. Mrs. Hema Sampath, learned counsel appearing for the petitioners in W.P.No.46713 of 2002, contended that the contentions of the Ex.



Office Bearers as well as the Ex-Employees of the bank should not be accepted and that the State should be allowed to proceed with the enquiry and inspection ordered under Sections 81 and 82 of the Act respectively, and that the real culprits should be brought to book. According to the learned counsel, the Ex.office Bearers and the Ex. Employees of the bank who acted hand in glove with the real estate agents were responsible for various corrupt practices indulged in by them, because of which, the petitioners in W.P.Nos.19111 of 2003, 19334 of 2003 and 46713 of 2002 and also similar such other innocent persons came to be affected, that they indulged in forgery and other malpractices while in office, whereby several housing loans or other types of loans which were availed in the name of certain individuals were fraudulently credited in some Savings Account for the benefit of those Ex. Office Bearers and Ex.Employees while no part of the money was actually lent to such Account holders. It was, therefore, contended that while directing appropriate action to be initiated against Ex.Office Bearers and Ex.Employees, these petitioners in W.P.Nos.19111 of 2003, 19334 of 2003 and 46713 of 2002 should not be forced to repay the loans. While considering the submissions of the learned counsel, I shall deal with the different Writ Petitions separately.

W.P.Nos.46713 of 2002, 19111 of 2003 and 19334 of 2003:-

31. At the outset, I feel that these three Writ Petitions, viz., W.P.Nos.46713 of 2002, 19111 of 2003 and 19334 of 2003 can be straight away disposed of by stating that such grievances expressed in these Writ Petitions will be taken care of after the initiative of the Registrar of Co-operative Societies, Chennai under Sections 81 and 82 of the Act as well as in the form of other penal proceedings which could be invoked by him is allowed to be proceeded with. Certainly on that score, there is no scope to hold that those petitioners, viz., the petitioners in W.P.Nos.46713 of 2002, 19111 of 2003 and 19334 of 2003 can be exempted from being proceeded against for non-payment of any loan availed by them as any such proceedings to be initiated against them would depend upon the documents said to have been executed by them and it is for the petitioners to establish before the appropriate forum that such execution by them in the form of material of documents was either forged by somebody else or that they never executed any such documents in order to be proceeded against for the purpose of recovery. Therefore, the prayer of the writ petitioners in the above said Writ Petitions, cannot be granted as prayed for for the various reasons urged by them. The Writ Petitions in W.P.Nos.46713 of 2002, 19111 of 2003 and 19334 of 2003, therefore, should fail and the same are liable to be dismissed.

W.P.No.15079 of 2002:-

32. As far as the writ petition in W.P.No.15079 of 2002 is concerned, as held by me, the very same prayer came to be considered by this Court in W.P.No.15789 of 2002 which was preferred by the Ex-Director, namely, Thiru P.Raju and I see no reason to differ from the reasoning of the learned Judge of this Court in his order dated 20-9-2002. Therefore, the said Writ Petition in W.P.No.15079 of 2002 is also dismissed as being covered by an earlier order of this Court dated 20-9-2002 in W.P.No.15789 of 2002.

W.P.Nos.19046 and 22828 of 2003:-

33. As far as the Writ Petitions in W.P.Nos.19046 and 22828 of 2003 are concerned, the challenge is to the show cause notice dated 27-5-2003 issued under Section 36 of the Tamil Nadu Co-operative Societies

Act, to the Ex-President and the Ex-Director of the Bank, calling upon them to show cause as to why they should not be permanently disqualified from holding the posts. A reading of Section 36 of the Act would be sufficient to dispose of these Writ Petitions, which reads as under:-

"36. Disqualification and removal:-

(1) Where in the course of an audit under Section 80 or inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 it appears that a person who is, or was, a member of a board has mis-appropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of any corrupt practice as defined in Section 162 or of gross or persistent negligence in connection with the conduct and management of, or of gross mis-management of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed under sub section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him."

34. A reading of the above said provision makes it clear that the Registrar is empowered to pass an order in writing, disqualifying a person permanently from holding in future any office in any registered society and can also by the same order remove him from that office. Under Sub Section 2 which postulates giving an opportunity to the concerned person to make his representation before passing any order under sub Section 2 of Section 36, a copy of the order of disqualification or removal should be communicated to the concerned person. However, before passing any such order under Section 36(1) of the Act, it is mandatory that it should have been preceded by the proceedings contemplated under Sections 80 to 83 or 162 of the Act and that in such proceedings, the concerned individual had been found to have committed such misfeasance or malfeasance or should have been found guilty of the criminal conduct alleged against him. A perusal of the impugned notice dated 27-5-2003 disclose that the very basis for the issuance of the said notice is only the informal report dated 31-10-2002. It will have to be stated that very many allegations mentioned in the said notice are at a fluid stage and it is nowhere stated that it has been found established that the petitioners in W.P.Nos.20028 of 2001 and 19046 of 2003 were responsible for any misappropriation or for any fraudulent transaction or of any corrupt practice in any proceedings initiated under Sections 80 to 83 or 162 of the Act. Admittedly, the criminal proceedings initiated against the petitioners are stated to be in the FIR stage in Cr.No.9 of 2003. Therefore, there is no scope to hold now that they were found guilty of any corrupt practice as defined under Section 162 of the Act. Therefore, it would be highly premature at this stage if the impugned notices issued under Section 36 of the Act are allowed to be proceeded with. I am, therefore, of the view that the said notice cannot be allowed to operate and it will always be open to the respondents to revive the said proceedings in the event of any of the ingredients of Section 36 of the Act in the form of the proceedings under Sections 80 to 83 or 162 of the Act are fulfilled. The Writ Petitions are therefore bound to be allowed holding that the impugned proceedings cannot be

allowed to operate at the present juncture and that those proceedings are accordingly liable to be set aside. It would always be open to the respondent-State to revive the said proceedings if need be on any future date. W.P.Nos.20028 of 2001, 28262 and 21974 of 2003:-

35. In W.P.No.20028 of 2001, the Ex-President seeks to challenge the enquiry ordered under Section 81 of the Act by proceedings dated 8-10-2001. In W.P.No.28262 of 2003, the very same petitioner seeks to challenge the inspection ordered under Section 82 of the Act in proceedings dated, 29-7-2003. In W.P.No.21974 of 2003 of 2003, the very same petitioner seeks to challenge the enquiry report dated 31-10-20 02.

36. In fact, the various submissions made by Mr.M. Venkatachalapathy, learned Senior counsel appearing for the petitioner was on the footing that inasmuch as right from December, 1998, on different occasions, similar such enquiries under the very same provision, namely, Section 81 and 82 of the Act were held at the instance of the Registrar, Co-operative Societies, there cannot be a further enquiry either under Section 81 or an inspection under Section 82 of the Act as such repeated exercise is not contemplated under the relevant provisions. According to the learned Senior counsel, such enquiries cannot be repeatedly held especially where on two earlier occasions, specific enquiries were held under Section 81 in which, no concrete proof was shown that the petitioners indulged in any corrupt practice to be proceeded against.

37. The learned Additional Advocate General, on the other hand, contended that the powers under Sections 81 to 83 of the Act cannot be limited as contended by the learned Senior counsel for the petitioners. According to the learned Additional Advocate General as and when any corrupt practice is brought to the notice of the competent authority, it is always open to the authority concerned to initiate necessary enquiry, inspection or investigation under Sections 81, 82 and 83 of the Act respectively.

38. A reading of Sections 81 to 83 of the Act, does disclose that no such limitation as has been argued on behalf of the petitioner has been stipulated in the said provisions. In fact, the power of enquiry, inspection or investigation which is vested with the Registrar can be exercised either based on an application of a majority of the Board or of not less than one-third of the members or on the request of the Financing Bank or of the District Collector or of his own motion. If the argument of the learned Senior counsel for the petitioners is to be accepted, then, if based on the request of the Financing Bank or of the District Collector, if some enquiry had been held under Section 81 of the Act and the same came to be closed without taking any action, then suo motu power of the Registrar could never be exercised. The very purport of providing for such an inspection under Section 81 or investigation under Section 82 of the Act, is to ensure that any mismanagement or indulgence of corrupt practice by the persons who are in-charge of the affairs of the society are under the constant surveillance of the statutory authorities so that the funds of the public which led to the formation of the society is not swindled by a few who were allowed to administer the society. Therefore, it would be highly dangerous to suggest that if once enquiry was held on some aspects of misfeasance and in the said enquiry, nothing constructive was brought out, the society or its Office Bearers should not be subjected to any further enquiry, inspection or investigation in future under Sections 81 to 83 of the Act. Looked at from

any angle, I am unable to subscribe to the contentions so raised on behalf of the petitioners.

39. Further, it is to be noted that after the initiation of the earlier enquiries under Section 81 of the Act in the year 1998 as well as in the year 2000, when another enquiry was ordered by proceedings dated 8-10-2001, the petitioners have successfully prevented the said enquiry to be proceeded with by preferring a Writ Petition in W.P.No.20028 of 2001. However, when the Registrar of Societies, Chennai ordered for informal enquiry through his subordinates by his order dated 15-4-2002, though there was an attempt to stall the said proceedings, fortunately, the same was not allowed by this Court when the Writ Petition in W.P.No.15789 of 2002 came to be dismissed on 20-9-2002. In fact, in the said order, the learned Judge made it clear that it is only a fact finding enquiry and that if based on the outcome of the said enquiry, if the Registrar of Co-operative Societies were to initiate any further enquiries under Sections 81 to 83 of the Act against the petitioners, there would be sufficient notice to the concerned parties and therefore, no prejudice would be caused to the petitioners in the event of any such enquiry being ordered. After all Under Sections 81 or 83, when an enquiry, inspection or investigation is ordered, as a result of such an enquiry or investigation, which would be held in the presence of the concerned individuals, it would only bring forth the true state of affairs in relation to maintenance of accounts, handling of funds or other properties of the society or any maladministration in the affairs of the society. Therefore, the contention that even the initiation of such an enquiry, inspection or investigation itself should not be allowed to take place at the threshold would be totally uncalled for.

40. Further, the informal enquiry ordered by the Registrar, Cooperative Societies, Chennai have been completed by the concerned officials and the report dated 31-10-2002 has also come on record. A perusal of the said report only discloses that a statutory enquiry under Sections 81, 82 or 83 is mandatorily required to find out the real state of affairs which prevailed in the matter of the handling of the funds of the Bank, appointment of personnel, administration of the bank and grant of loans under different Heads, viz., housing loans, professional loans, business loans, etc. I say so because in the report, it is highlighted and prima facie shown that in the matter of grant of loans, several safeguards to be ensured before granting the same were not strictly followed and that it is also alleged that the loans were not granted and paid to the persons who applied for the said loans. This is only one of the defects pointed out in the said report. Therefore, in all fairness, the petitioners who were the Ex-office Bearers during the relevant period i.e., between 1-11-1996 and 25-5-2001, they should be bold enough to face any such enquiry ordered under Section 81 or inspection or investigation under Sections 82 and 83 of the Act, if really they had no role to play in any of the maladministration or mis-management or corrupt practices as suspected in the report dated 31-10-2002. Unfortunately, far from facing such an enquiry, the petitioners have come forward with these Writ Petitions and thereby attempted to suppress the very initiation of the enquiries, inspection and investigation apparently with a view to avoid the whole proceedings. I am afraid such an attempt at the instance of the petitioners can be allowed to take place in a co-operative society wherein, banking transactions were also allowed to take place after the year 1984 and as pointed out by the learned

Additional Advocate General, in the light of various discrepancies pointed out by the RBI, ultimately by an order dated 22-8-2003, it came to be ordered and also directed that by virtue of the provisions of the Banking Regulations Act and in public interest, the Registrar of the Co-operative Societies, Tamil Nadu should windup the bank and appoint a liquidator. The licence dated 7-4-1984 granted to the bank under Section 22 of the Banking Regulations Act to carry on banking business in India has also been cancelled by a subsequent order of the RBI dated 25-8-2003. When such being the outcome of the Banking operations of the Bank in the view of the RBI which had taken the extreme step to order for winding up of the bank as well as for cancellation of its licence to carry on banking operations, it would be wholly unjustified if the Registrar, Co-operative Societies, Chennai is to be directed not to hold any enquiry under Section 81 or inspection or investigation under Sections 82 or 83 of the Act. Therefore, I do not find any good grounds to countenance the prayer of the petitioners.

41. The learned Senior counsel relied upon various decisions to support his arguments. Of the various decisions, I find the judgments reported in 2000(4) CTC 339, 1979(1) MLJ 6 (cited supra) and 1978 (1) MLJ 284 (S.VENKATARAMAN versus THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, THANJAVUR AND OTHERS) have got some relevance though the same do not really advance the case of the petitioners. In "2001(4) CTC 339 (N.VARADARAJAN (CO-OPERATIVE SUB-REGISTRAR), SPECIAL OFFICER, SALEM CO-OPERATIVE HOUSING SOCIETY LTD., SALEM versus STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNMENT, CO-OPERATION, FOOD AND CONSUMER PROTECTION DEPARTMENT, MADRAS-9

AND TWO OTHERS)", which is the Division Bench judgment of this Court to which I was also a party, the challenge was that the enquiry held under Section 81 by certain Officers on the direction of the "empowered officers" could not legally hold the enquiries, as the authorisation itself was wanting in legal sanction. In paragraph 33 of the said judgment, the Division Bench has held as under:-

"33. It was argued by the learned Advocates that besides the invalidity, in some of the Writ Petitions the questions of facts were involved, on the basis of which the inquiry was challenged. For example, it was pointed out that in some cases the inquiry was belated or was not completed within the prescribed timeframe as provided in Section 81 and in some matters the other factual challenges were there. We only say that such other grievances could be made only after the completion of the inquiries and it will be perfectly permissible for the parties involved to complain about the illegality of the inquiry either to the officer holding the inquiry or to the appellate or revisional officer. That need not detain us. We grant such liberty to all the parties to raise all the other points on facts before the respective authorities. In fact, in our opinion, the inquiry by itself need not create a cause of action. It is only the outcome of the inquiry, if sought to be acted upon. Even then, the parties would have their own remedies as provided in the Act. That aspect we have already considered earlier in the judgment. In our view, all the challenges other than the challenge to the legality of the impugned G.O.Ms.No.269, dated 8-6-1988 would be premature. On that count also, all the writ petitions are liable to be dismissed and are hereby dismissed. Under the circumstances, there shall be no order as to the costs. Connected W.M.Ps are closed."

(Underlining is mine)

Therefore, even going by this Division Bench Judgment, if at all there could be any cause of action for the petitioners to pose any challenge that may be after the conclusion of the enquiry under Section 81 to 83 and not before.

42. In the judgment reported in "1979(1) MLJ 6

(M.KUNJITHAPATHAM AND OTHERS versus THE THIRUVILAIYATTAM VILLAGE CO-OPERATIVE AGRICULTURAL CREDIT SOCIETY ZB-95, BY ITS SECRETARY, THIRUVILAIYATTAM AND ANOTHER)", the challenge was to the order of Co-operative Tribunal which upheld the order of the Registrar in holding the Board of Directors along with the then Secretary of the Society, guilty of breach of trust in misappropriating the funds of the society. The question of law involved therein was that in an earlier reference by the Board of Directors themselves before the Registrar, the Secretary alone was held liable and therefore, whether there could be a fresh proceedings for a reference before the Registrar himself as against the Board of Directors also along with the then Secretary for the very same charge of misappropriation of the society's funds. The learned Judge of this Court in a revision under Article 227 of the Constitution of India, preferred against the order of the Co-operative Tribunal was pleased to hold that where the earlier reference resulted in an award of the Registrar, there cannot be a fresh surcharge proceedings on the very same grounds by implicating the Board of Directors. The learned Judge has held in para 3, which reads as under:-

"3. ... This would not be conducive to an orderly application and understanding of the laws. In my view, therefore, if there has been an invocation of one of two or more remedies available in law, such an invocation results in a decision rendered by the appropriate statutory authority, then a resurrection of the very same subject-matter through another available remedy contemplated in the very same enactment would lead to a violation of the principles of natural justice as well as the accepted canons of common law. In this view, though Mr. Rajan is right in his submission that Sections 73 and 71 act independently in their respective fields, yet if one provision is taken advantage of by the Society for securing its rights, and if such a reference to the Registrar, as in this case, under Section 73, has resulted in an award, it cannot be thrown overboard and bypassed by invoking once again the provisions of section 71, as if fresh surcharge proceedings could be initiated by the society which is armed with an award which is executable in the eye of law. ...."

43. Sections 71 and 73 of the old Act correspond to Sections 87 and 90 of the new Act. Therefore, in the first place, the said judgment relates to the surcharge proceedings contemplated under Section 87 of the Act which can be settled by seeking a reference under Section 90 of the Act before the Registrar. There is vast difference between Sections 80 to 83 of the present Act and 87 and 90 of the old Act. The purport and requirements of Sections 80 to 83 are far different from the surcharge proceedings contemplated under Section 87 and the reference that could be made under Section 90 of the old Act. These two sets of provisions contemplate two different course of action and therefore, they cannot be compared in order to apply the ratio of the decisions rendered in relation to a surcharge proceedings to an enquiry, inspection or investigation contemplated under Sections 81 to 83 of the Act. The said judgment cannot therefore, be applied

to the facts of this case.

44. As far as the judgment reported in "1978(1) MLJ 284 (S. VENKATARAMAN versus THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, THANJAVUR AND OTHERS)" is concerned, that was a case where an ex parte statement was used against the Sub Registrar and an order of surcharge was issued pursuant to notice under Section 71(1) of the old Act which was challenged. The same came to be set aside on the ground of violation of principles of natural justice for not giving proper opportunity to the affected person to cross-examine the witnesses. The said ruling is also therefore, not applicable to the facts of this case.

45. Moreover, inasmuch as I have already dismissed W.P.No.15079 of 2002 following the earlier order of this Court in W.P.No.15789 of 2002 dated 20-9-2002, there should be no impediment for the Registrar, Chennai to proceed with the enquiry, inspection or investigation to be carried out under Sections 81 to 83 of the Act either based on the earlier proceedings dated 8-10-2001 or the present proceedings dated 29-7-2003, but also to proceed afresh based on the informal report dated 31-10-2002 by ordering a fresh enquiry in order to put the affairs of the bank straight and safeguard the interest of the investors and other members of the bank.

46. Therefore, I do not find any merits in W.P.Nos.20028 of 2001, 28262 and 21974 of 2003 and the same are liable to be dismissed. W.P.No.23504 of 2003:-

47. In the light of my above said conclusions, while dealing with this Writ Petition, viz., W.P.Nos.23504 preferred by the Ex-Secretary, challenging the charge memos dated 16-7-2003 and 19-7-2003, it will have to be held that there is no scope to stall those proceedings as well. After all when the petitioner in the above said Writ Petition admittedly functioned as the Secretary of the Bank and when he has been issued with the charge memos dated 16-7-2003 and 19-7-2003, he has to only submit his explanation and come out un-scathed from the charges levelled against him. The issuance of the charge memos do not mean that he has been straight away found guilty of the charges levelled against him in the above said charge memos. Even after the submission of his explanation, it is open to him to seek for further opportunities in any enquiry that may be held against him. Therefore, it is too early to interdict with the said proceedings at this stage. If the petitioner has nothing to do with any of the allegations contained in the charge memos, there is no reason why he should feel shy to face the enquiry proceedings. It is not the case of the petitioner that the issuance of the charge memos was by any incompetent authority or there are no rule or regulation to support the issuance of the said charge memo. Therefore, in the absence of any other substantial legal lacuna in the issuance of the charge memos, I do not find any scope to interfere with the same in these Writ Petitions. Therefore, W.P.No.23054 of 2003 cannot be maintained at this stage and if ultimately in the disciplinary proceedings if the petitioner was to face any adverse order by way of punishment, it is always open to the petitioner to work out his remedy in the manner known to law. Therefore, the said Writ Petition should fail and the same is also liable to be dismissed.

W.P.No.26029 of 2003:-

48. As far as this Writ Petition is concerned, the petitioner, i. e. the Ex.Secretary, seeks to challenge the conditional order of attachment before judgment of the Deputy Registrar of the Co-operative

Societies, Madurai, Admittedly, the impugned proceedings are pending before the concerned authority which were preferred by the bank. Therefore, it is for the petitioner to approach the concerned authorities and seek for the raising of the attachment. Since the petitioner has got an efficacious remedy available to him by moving the authorities who issued the order of interim attachment, the present Writ Petition to interdict with the said attachment cannot be maintained. If the petitioner moves the appropriate authority for raising the attachment, in the event of the petitioner furnishing necessary security to the value of the property attached, there is every scope for the concerned authority who ordered the attachment, to pass appropriate orders varying the order of attachment. In any event it is for the concerned Authority to decide as to whether the order of attachment is to be varied or not and therefore, there is no scope to grant any relief in this Writ Petition. This Writ Petition should also fail and the same is also liable to be dismissed as not maintainable.

W.P.Nos.24257, 24894, 25156, 25206, 25258, 26347, 26348, 26349, 26350 , and 26968 of 2003:-

49. In these Writ Petitions, the challenge is to the FIR in Cr.No.9 of 2003 dated 22-8-2003. The challenge is three fold. In the first place, it was contended by Mr.Alagiri Swamy, learned Senior counsel appearing for the petitioners, which was also adopted by Mr.M. Venkatachalapathy, the other learned Senior counsel as well, that, even accepting the averments and allegations contained in the FIR as true, since the basis for the said FIR was the informal report dated 31-10-2002, inasmuch as there was no specific averment or allegations against any of the petitioners, except the petitioner in W.P.No.25206 of 2003 , there was no scope to proceed further based on the said FIR, as no case was made out. In the next place, it was contended that since the Act itself is a self-contained Code and the whole allegations are on the footing that the petitioners as Ex-office Bearers or ExEmployees of the Bank indulged in certain conduct which would amount to corrupt practice falling under Section 162 of the Act, and they could be prosecuted only under the said provision, in the absence of a valid sanction under Section 164(3) of the Act, the prosecution cannot stand. Lastly, it was contended that when the charges on which the petitioners are sought to be proceeded against the petitioners including Section 409 IPC, which relates to a public servant, then again, by virtue of the settled legal position that none of the petitioners could be called as public servants as defined under Section 21 of the Indian Penal Code, the prosecution cannot be proceeded against. In support of the above submissions, reliance was mainly placed upon the order dated 8-1-2003 in CrI.O.P.No.12756 of 2002 of the Hon'ble Mr. Justice Malai. Subramanian.

50. As against the above submissions, the learned Additional Advocate General as recorded earlier, contended that the order of the Hon' ble Mr.Justice Malai. Subramanian was per in curium as the said order did not take note of Section 26 of the General Clauses Act apart from an earlier judgment of this Court reported in ILR (1) Mad 35 and also that it is contrary to the decision of the Hon'ble Supreme Court reported in "AIR 1967 SC 170 (CHANDRIKA SAO AND ANOTHER versus STATE OF BIHAR)". Alternatively, it was contended that the complaint which was registered as FIR in Cr.No.9 of 2003 did implicate each one of the petitioners to the offences alleged and that the said complaint was not only referable to the report dated 31-10-2002, but also very many other statements recorded from other individuals by the complainant



and therefore, applying the dictum of the Hon'ble Supreme Court reported in "AIR 1992 SC 604 (STATE OF HARYANA & OTHERS versus CH.BHAJAN LAL AND OTHERS)" as to under what circumstances, there could be scope for interfering with an FIR, there is no scope to interdict with the present FIR in Cr.No.9 of 2003 based on the grounds raised by the petitioners. The learned Additional Advocate General also contended that even going by the decision relied upon by the petitioners in "AIR 20 00 SC 698 (STATE OF MAHARASHTRA versus LALJIT RASHI SHAH AND OTHERS)", it will have to be held that there was every legal justification to proceed against the petitioners either under Section 162 of the Act or under the General Criminal Law for different offences alleged against the petitioners.

51. On a detailed consideration of the respective submissions, I am convinced that the submissions made by the learned Additional Advocate General merit acceptance. As contended by him, in the Judgment reported in "AIR 1992 SC 604 (STATE OF HARYANA & OTHERS versus CH. BHAJAN LAL & OTHERS)", the Hon'ble Supreme Court has cautioned that the High Court in exercise of powers under Article 226 or Section 482 Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice, but such power should be exercised sparingly and that too in the rarest of rare cases. Of the seven principles set out in the said judgment, I am of the view that by applying principle NO.3 and 5, it can be safely held that in the present stage of the proceedings, the FIR does not call for interference. The said principles can be extracted for our present purpose which reads as under:

"1. .... ..

"2. .... ..

"3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

"4. .... ..

"5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

"6. .... ..

"7. .... .."

52. Going by principle No.3, I am convinced that it can be safely held in the case on hand that the evidence so far collected in support of the present FIR in Cr.No.9 of 2003 does disclose the basis for the commission of an offence or make out a case. The complaint dated 25-7-2003 form the basis for the registration of FIR in Cr.No.9 of 20 03. Though Mr.Alagiri Swamy, learned Senior counsel strenuously contended that the basis of the complaint was the report dated 31-10-2002 and the said report did not whisper anything about the conduct of the petitioners vis-a-vis the charges. When the complaint dated 27-5-200 3 was produced by the learned Addl.Advocate General in this Court, it was noticed that the said complaint was not only based on the report dated 31-10-2002, but also certain other statements recorded from certain other individuals who were aggrieved against the conduct of the petitioners in the course of the discharge of their functions as Ex.Office Bearers or Ex.Employees of the bank. The complaint also made specific reference to each one of the petitioners and the role played by them

in the various misfeasance committed by them which resulted in the mismanagement of the affairs of the bank. When such allegations formed the basis for the registration of FIR in Cr.No.9 of 2003, it would be highly preposterous to suggest that ignoring those averments contained in the complaint dated 25-7-2003 and merely going by the report dated 31-10-2002, it should be held that no case was made out as against the petitioners in the FIR in Cr.No.9 of 2003. Similarly applying the principle No.5 to the facts of this case, I am unable to hold that the allegations made in the present complaint are so absurd or improbable in order to interfere with the same at this stage. Therefore, I am unable to accept the submissions made on behalf of the petitioners on this ground.

53. As far as the contention, based on the order dated 8-1-2003 in CrI.O.P.No.21756 of 2002 which was rendered under identical circumstances, wherein the discharge of the accused by the Magistrate was upheld on the ground of lack of sanction under Section 164(3) of the Act, here again, the submission lacks merit. The above said order dated 8-1-2003 in CrI.O.P.No.12756 of 2002 proceeded on the footing that the prosecution can be only under Section 162 of the Act and not under the General Criminal Law. Though the learned Judge, in his above said order did refer to Section 162(5) which specifically provides that any action taken against any person under that Section shall not affect and shall be in addition to any other proceedings by way of investigation or otherwise which might apart from this Act be instituted against him, the learned Judge proceeded to hold that "what is meant thereby is that action can be taken in the form of any other proceedings also and that however, when the infringement of the rule is to be punished under the Act, the prosecution for offence under Indian Penal Code alone is not proper."

54. When the above said view of the learned Judge is analysed in the light of the decisions of the Hon'ble Supreme Court as reported in "AIR 2000 SCW 698 (STATE OF MAHARASHTRA versus LALJIT RASHI SHAH AND OTHERS)" and also in AIR 1967 SC 170 (cited supra) which has been followed by the Division Bench of the Bombay High Court reported in 1968 Bombay 124, it can be seen that the said view of the learned Judge is quite contrary to the dictum of the Hon'ble Supreme Court on this vital legal question. In the judgment reported in AIR 2000 SCW 698 ( cited supra), the Hon'ble Supreme Court dealt with the appeals for which leave was granted by the High Court itself under Article 134(1)(c) of the Constitution read along with Rule 128 of the Supreme Court Rules. The said appeals were preferred by the State of Maharashtra. In para 3, the Supreme Court has dealt with the question as under:-

"3. The Division Bench by the impugned Judgment analysed the provisions of Section 161 of the Act as well as Section 21 of the Indian Penal Code and Section 2 of the Prevention of Corruption Act, 1947. The Division Bench of the High Court came to the conclusion that Section 161 of the Act incorporating Section 21 of the Indian Penal Code ipso facto does not enlarge the definition of the term 'public servant' in Section 21 of the Indian Penal Code. It further held that the State Legislature which was competent to amend Section 21 of the Indian Penal Code, the subject of criminal law being on the concurrent list and yet the said not having been done, the expression 'public servant' under Section 161 of the Act would mean those officers to be ' public servants' for the purpose of offences under the Co-operative Societies Act and Section 21 of the Indian Penal Code cannot be said to have engrafted into

Section 161 of the Act. Accordingly, the High Court held that the accused persons cannot be prosecuted for offences under Section 409 of the Indian Penal Code and Sections 5(1)(c) and 5(1)(d) read with 5(2) of the Prevention of Corruption Act, though they can be prosecuted for offences which cognizance had been taken. Having held so, leave to appeal having been prayed for by the State, the High Court granted leave under Article 134(1)(c) of the Constitution read with Rule 28(2) of the Supreme Court Rules and hence the present appeals." (Emphasis applied)

55. The highlighted part of the above extracted portion makes it amply clear that the Division Bench held that though there was no scope to prosecute the accused persons under Section 409 of IPC as well as Section 5(1)(c) read with 5(2) of the Prevention of Corruption Act, as the status of the public servant was lacking in them, they could still be proceeded against for other offences for which cognizance had been taken. It was the said preposition of law laid down by the Division Bench which came to be ultimately upheld by the Hon'ble Supreme Court when in para 7 of the above referred to judgment, the Hon'ble Supreme Court has held as under:

"7. A Municipal Councillor was prosecuted for having committed an offence under the Prevention of Corruption Act and the said conviction and sentence was upheld in appeal by the High Court, but this Court in the aforementioned decision, 1985(3) SCC 606: (AIR 1985 SC 1655: 19 86 Cri LJ 14), set aside the conviction and sentence on a finding that Municipal Councillor cannot be held to be a 'public servant' within the meaning of Section 21 of the Indian Penal Code. In the aforesaid premises, we see no infirmity with the impugned judgment of the High Court to be interfered with by this Court. The appeals fail and are dismissed." (Emphasis added)

56. Therefore, the ratio of the above said judgment of the Hon'ble Supreme Court is to the effect that irrespective of the penal provision contained in the self-contained Code, there is every scope to proceed against the accused persons who could be prosecuted under the provisions of the general penal provisions for other offences other than the provisions applicable to public servants.

57. In the Division Bench Judgment of the Bombay High Court reported in "AIR 1968 Bombay 124 (WAMAN SAMBHAJI DUKA versus NARHARI SAMBHAJIRAO PHATALE)", the Division Bench was dealing with a revision filed by the accused, who was prosecuted under Section 406, 467 and 420 of IPC. The accused in that case moved the Judicial Magistrate to dispose of the case as either not maintainable or to stay the proceedings until a valid sanction is obtained under the provisions of the Cooperative Societies Act. The learned Magistrate rejected the application and decided to proceed with the trial. It was at that stage, the revision was moved. The contention was that the Co-operative Societies Act was a self-contained Code, that the relevant provisions under Sections 146, 147 and 148 of the Maharashtra Co-operative Societies Act which are similar to Sections 162, 163 and 164 of the Act, the prosecution under the provisions of the Indian Penal Code cannot be proceeded with. Dealing with the said contention, the Division Bench applied the ratio of the Hon'ble Supreme Court reported in "AIR 1967 SC 170 (CHANDRIKA SAO AND ANOTHER versus STATE OF BIHAR)" and the relevant passage relied upon by the Division Bench of the Bombay High Court was to the following effect:-

"The appellant had committed an offence under Section 26(1)(h) of the Act as also under S.353 IPC because he had used criminal force. He could be prosecuted for either or both these offences at the discretion of the prosecution. It may be that he was not prosecuted for both the offences and the prosecution was restricted to the offence under Section 353 IPC only to obviate the necessity of obtaining the Commissioner's sanction which was required for prosecution under Section 26(1)(h) of the Act. Even so, the prosecution could not be said to have done something which was unwarranted by law. An offence under section 353 IPC was a graver offence than the one under S.26(1)(h) of the Act. In choosing to prosecute the appellant for a graver offence under the general law the prosecution could not be regarded as having acted colourably. If the prosecution were to be so restricted, graver offences would go unpunished."

(Emphasis added)

Following the above said ratio of the Hon'ble Supreme Court, it was held as under in para 9:-

"9. It may be noted that Maharashtra Co-operative Societies Act is mainly interested in the proper administration and functioning of the Co-operative Societies. Several offences have been created under the Act only with a view to see that the administration of the cooperative societies remains as clean as possible. With the growth of cooperative movement in the country it is also possible that dishonest persons may wantonly undertake prosecutions against officers. When, therefore, an offence under the Act is alleged to that extent only the safeguard of sanction has been laid down as a sort of protection to officers against their exposure to wanton prosecutions. It is certainly not the function of the Co-operative Societies Act that the graver offence should go unpunished and the accused should be prosecuted only under the lesser offences."

58. Therefore, the above referred to passages of the Hon'ble Supreme Court, as well as, that of the Division Bench of the Bombay High Court makes it explicitly clear that when the offences alleged could be proceeded against under the General Criminal Law, namely, the Indian Penal Code, the want of sanction under the Act cannot be an impediment for the prosecuting authorities to proceed against the accused persons. When the legal principle to the above effect is so very clear it can be safely held that the sanction required under Section 164(3) of the Act will be necessary if at all the prosecution is to be launched under Section 162 of the Act. But where the acts alleged provide scope for proceeding against the accused persons under different provisions of the Indian Penal Code, the want of sanction under Section 164(3) will have no implication for such prosecution. The reference to Section 409 of IPC in the impugned FIR will also not affect the proceedings, inasmuch as, in the first place, it will have to be held that as on date, it is at the stage of an FIR; as compared to the order of the learned Judge in Crl.O.P.No.12756 of 2002, dated 8-1-2003, where the matter came before this Court after the charge sheet came to be laid before the concerned Judicial Magistrate where discharge came to be made which was under challenge at the instance of the State. In fact, in the judgment relied upon by the petitioners reported in AIR 1990 MLJ(Crl.) 529 of the offences alleged against the concerned accused which were under Sections 409, 477(A) and 467 IPC, this Court while holding that the President of the Co-operative Society is not a

public servant within the meaning of 125 IPC and therefore, he cannot be proceeded against under Section 409 IPC yet, he can be held to have committed the offence under Section 406 IPC. Therefore, at this stage, in my opinion, there is no ground to interfere with the FIR. Further as rightly pointed out by the learned Addl. Advocate General, in ILR (1) Madras 35 (Proceedings of the High Court, dated 22-2-18 76), this Court has held as under:

"The High Court does not concur in the view of the law stated by the District Magistrate. The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863 (vide Section 20). The permission of the Board of Revenue or of the Committees is required only for the procedure prescribed in the (56) Special Acts, and these special provisions cannot be taken out of the Acts and applied as a restriction to the ordinary operation of the criminal law. The District Magistrate will restore the complaint to his file, and will proceed to dispose of it on the merits."

59. I am therefore, convinced that the registration of the impugned FIR in Cr.No.9 of 2003 under the various provisions of the Indian Penal Code cannot be found fault with, inasmuch as, the only impediment could be by virtue of Section 26 of the General Clauses Act 1897 or for that matter Section 20 of the Madras General Clauses Act where an act or omission constitutes an offence under two or more enactments, the offender should be liable to be prosecuted and punished under either or any of those enactments, but not liable to be punished twice for the same offence. Except to that extent of not punishing the accused person twice for the same offence, there is no prohibition for proceeding either under the provisions of the Indian Penal Code or the provisions of the Act. When the prosecution has chosen to register the crime under the provisions of the Indian Penal Code, there being no legal impediment in the said action of the State, I do not find any scope to quash the FIR for any of the grounds urged on behalf of the petitioners. Since my above said view has been based upon the decisions of the Hon'ble Supreme Court as well as the Division Bench ruling of the Bombay High Court, the Judgment of this Court dated 8-1-2003 in Crl.O.P.No.12756 of 2002 need not stand in the way of disposal of these Writ Petitions. I also do not find any other contrary decision cited at the bar on behalf of the petitioners to be in conflict with the view taken by me. In such circumstances, I do not find any merits in these Writ Petitions. These Writ Petitions, therefore, fail and the same are liable to be dismissed.

In the result,

- a) Writ Petitions in W.P.Nos.20028 of 2001, 15079 of 2002, 46713 of 2002, 19111 of 2003, 19334 of 2003 and 21974, 23504, 24257, 24894, 25156, 25206, 25258, 26029, 26347, 26348, 26349, 26350, 26968 and 2826 2 of 2003 are dismissed;
- b) Writ Petitions in W.P.Nos.22828 of 2003 and 19046 of 2003 are allowed holding that the impugned proceedings cannot be allowed to operate at the present juncture and that those proceedings are accordingly set aside;
- c) No order as to costs; and
- d) All the connected W.P.M.Ps. are closed.

suk

To

1.The Secretary to Govt.,  
The State of Tamil Nadu,  
Food, Co-operation Department,  
Fort St.George, Chennai-9.

2. The Registrar of Co-operative  
Societies,  
N.V.N.Maligai, Kilpauk,  
Chennai-600 010.

3. The Additional Registrar (M.P.D.),  
Office of the Registrar of Co-op.  
Societies, N.V.N.Maligai, Kilpauk,  
Chennai-10.

1. The Addl.Registrar/Zonal Officer  
for Madurai Region,  
Special Officer, Tamil Nadu Consumer  
Co-op.Federation Ltd.,  
Saligramam, Chennai-600 093.

5. The Joint Registrar of Co-operative  
Societies, Madurai Region,  
13, Kanaga Apartment,  
Lady Dock College Road, Madurai-625 002.

6. The Deputy Registrar of Co-op.  
Societies, Madurai Circle  
Meenakshi Bhavanam, Tallakulam  
Madurai-625 002.

7. The Special Officer,  
Madurai Urban Co-op.Bank Ltd.,  
32, Naicken New St., Madurai-625 001.

8. The Secretary  
Madurai Urban Co-op.Bank Ltd.,  
32, Naicken New St., Madurai-625 001.

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