

DHANRAJ N ASAWANI

v.

AMARJEETSINGH MOHINDERSINGH BASI AND OTHERS

(Criminal Appeal No. 2093 of 2023)

JULY 25, 2023

**[DR. DHANANJAYA Y. CHANDRACHUD*, CJI,
J.B. PARDIWALA AND MANOJ MISRA, JJ.]**

Issue for consideration: Whether the provisions of s.81(5B) of Maharashtra Co-operative Societies Act, 1960 can be construed as preventing a share holder of the society such as the appellant, who was also an erstwhile director, from independently setting the criminal law in motion.

Maharashtra Co-operative Societies Act, 1960 – s.81(5B) – The High Court was of the view that since the provisions of the 1960 Act are special, the provisions of s.81(5B) would preclude the registration of an FIR at the behest of a person, such as the appellant, who is a shareholder of the co-operative society – Propriety of:

Held: S.81 of the 1960 Act casts a public duty on the auditor and the Registrar to audit co-operative societies – A 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 co-operative society – S.81(5B) of the Act casts a positive obligation on the auditor or the Registrar to file an FIR – S.81(5B) demands accountability and vigilance from the auditor and the Registrar in performance of their public duty – 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 s.81(5B) debars persons other than the auditor or the Registrar from filing an FIR. [Paras 20 and 24]

Maharashtra Co-operative Societies Act, 1960 – s.81(5B) – FIR registered by appellant-share holder against respondents for offences punishable u/ss.420, 406, 409, 465, 467, 468 and 471 r/w. s.34 of IPC – FIR quashed by High Court relying on s.81(5B) of the 1960 Act – Propriety of:

* Author

SUPREME COURT REPORT: DIGITAL

Held: The High Court held that s.81(5B) contains special provisions for the submission of a special report and the obtaining of the permission of the Registrar before the lodging of an FIR – It held that these provisions would be rendered otiose if the general provisions in the Code of Criminal Procedure 1973 were to apply – In the instant circumstances, the High Court has erred in quashing the FIR which was lodged by the appellant – S.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 – 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) of s. 81 which cast a duty on the Registrar/auditor to lodge a first information report – Impugned Judgment and order of the High Court set aside. [Paras 7, 26 and 29]

Lalita Kumari v. Government of U P (2014) 2 SCC 1 : [2013] 14 SCR 713; A.R. Antulay v. Ramdas Srinivas Nayak (1984) 2 SCC 500 : [1984] 2 SCR 914 – followed.

Jamiruddin Ansari v. CBI (2009) 6 SCC 316 : [2009] 7 SCR 759; Jeewan Kumar Raut v. CBI (2009) 7 SCC 526 : [2009] 10 SCR 272; State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335 : [1990] 3 Suppl. SCR 259 – distinguished.

State of Punjab v. Balbir Singh (1994) 3 SCC 299 : [1994] 2 SCR 208; Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440 : [1994] 1 SCR 445; Mirza Iqbal Hussain v. State of Uttar Pradesh (1982) 3 SCC 516; T.T Antony v. State of Kerala (2001) 6 SCC 181 : [2001] 3 SCR 942; Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288 : [1987] 1 SCR 702; Ratanlal v. Prahlad Jat (2017) 9 SCC 340 : [2017] 8 SCR 682; Rangku Dutta v. State of Assam (2011) 6 SCC 358 : [2011] 8 SCR 639; Union of India v. Popular Construction (2001) 8 SCC 470 : [2001] 3 Suppl. SCR 619 – referred to.

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2093 of 2023.

From the Judgment and Order dated 16.11.2021 of the High Court of Judicature at Bombay in Writ Petition No. 4134 of 2019.

With

Special Leave Petition (Criminal) No. 2246 of 2022.

V. Giri, Deepak Nargolkar, Sr. Advs., Prashant Shrikant Kenjale, Naresh Shamnani, Minal Chandani, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Shreya Saxena, Ms. Yamini Singh, Shrirang Verma, Shantanu Phanse, Sudhanva Bedekar, Gaurav Singh, Soumik Ghosal, Sunil Fernandes, Ms. Nupur Kumar, Divyansh Tiwari, Ms. Muskan Nagpal, Amol Nirmalkumar Suryawanshi, Abhishek Bharti, Ms. Aarti Mahto, Balaji Srinivasan, Pravartak Pathak, Ms. Ankita Chaudhary, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. Leave granted.
2. This appeal arises from a judgment dated 16 November 2021 of a Division Bench of the High Court of Judicature at Bombay by which it has quashed FIR No 806 of 2019 lodged by the appellant for offences punishable under Sections 420, 406, 409, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code¹ at Police Station Pimpri, Chinchwad.
3. The first respondent was the Chief Executive Officer of Seva Vikas Co-operative Bank, registered under the provisions of the Maharashtra Co-operative Societies Act 1960². The second respondent is the former Chairperson of the bank. Several complaints were lodged by individuals, members, share-holders, and depositors of the bank against the management alleging acts of cheating and misappropriation of funds. On the basis of the complaints, the Economic Offences Wing³

1 "IPC"

2 "1960 Act"

3 "EOW"

SUPREME COURT REPORT: DIGITAL

at Pimpri-Chinchwad registered an FIR and conducted investigations in January 2019 and thereafter. FIR Nos. 235 and 241 of 2019 were registered at the behest of the bank for offences punishable under Sections 406 and 420 read with Section 34 of the IPC. During the course of the investigation, the EOW issued a communication on 16 February 2019 to the District Sub Registrar, Co-operative Societies, Pune, *inter alia*, seeking details and information regarding the forensic audit, credit policy, collateral policy and loan policies, and the RBI guidelines pertaining to the affairs of the bank.

4. On 2 May 2019, a letter was addressed by the Police Inspector of the EOW, Pimpri-Chinchwad to the Commissioner of Co-operation and Registrar of Co-operative Societies Maharashtra seeking a copy of the forensic audit report of the bank. By a letter dated 9 May 2019, the Commissioner of Co-operation and Registrar of Co-operative Societies requested the Joint Registrar (Audit) to conduct an investigation and to provide the documents which were sought by the EOW. It appears that thereafter an investigation was conducted and an inspection report dated 12 June 2019 was submitted.
5. Based on an application under the Right to Information Act 2005, the appellant sought a copy of the inspection report. On 16 June 2019, the Joint Registrar submitted a copy of the inspection report to the appellant. According to the appellant, the report indicated that loans were advanced to persons and entities who were not eligible or creditworthy and they were diverted for purposes other than those for which they were availed; and monies were siphoned off and misappropriated. It has been alleged that the bank did not take steps to recover the loans and a large number of accounts were declared as non-performing assets.
6. On 19 July 2019, the appellant lodged FIR No. 806 of 2019 at PS Pimpri, Pimpri-Chinchwad against the first and second respondents alleging the commission of offences under Sections 420, 406, 409, 465, 467, 468 and 471 read with Section 34 of the IPC. The substance of the FIR was based on the inspection report prepared by the Joint Registrar (Audit) which allegedly indicated financial irregularities by the office bearers of the bank.
7. The High Court was moved by the first and second respondents in a writ petition under Article 226 of the Constitution for quashing the

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

FIR. The High Court allowed the petition by its impugned judgment dated 16 November 2021. The High Court held that Section 81(5B) contains special provisions for the submission of a special report and the obtaining of the permission of the Registrar before the lodging of an FIR. It held that these provisions would be rendered *otiose* if the general provisions in the Code of Criminal Procedure 1973⁴ were to apply and hence the latter must yield to the special procedure which has been prescribed under the 1960 Act. The High Court held that where the allegations in regard to the commission of offences are solely based on an audit which has been conducted under Section 81, the peremptory procedure prescribed in Section 81(5B) must be scrupulously followed. The High Court concluded that the FIR was based on the report of the auditor who was appointed under Section 81(3)(c) and hence it was not open to the appellant to fall back on the general principle that the criminal law can be set in motion by any individual upon which the police are duty bound to register an FIR absent a statutory prohibition.

8. We have heard Mr Prashant Shrikant Kenjale, counsel for the appellant and Mr V Giri and Mr Deepak Nargolkar, senior counsel with Mr Shantanu Phanse, counsel for the respondents. Mr A N S Nadkarni, senior counsel and Mr Sunil Fernandes, counsel appeared for the intervenor.
9. Notice was issued by this Court in these proceedings on 29 April 2022 since the interpretation of the provisions of Section 81(5B) of the 1960 Act is involved.
10. The 1960 Act was enacted to provide orderly development of the co-operative movement in Maharashtra. Chapter VIII of the 1960 Act provides for 'audit, inquiry, inspection and supervision'. Section 81 mandates the society to cause its accounts to be audited at least once every financial year by an auditor from a panel prepared by the Registrar and approved by the State government. The first proviso to Section 81(1)(a) empowers the Registrar to audit or cause to be audited the accounts of a society by a panel of auditors approved by the State government. Section 81(3) stipulates that the Registrar or the person authorized shall for the purpose of audit at all times

SUPREME COURT REPORT: DIGITAL

have access to books, accounts, documents, papers, securities, cash and other properties belonging to or in the custody of the co-operative society. Section 81(3)(c) empowers the Registrar or any person authorized to carry out or cause to be carried out a test audit of the accounts of the co-operative society. Section 81(5B) details the subsequent actions required to be taken by the auditor or the Registrar after the preparation of the audit report:

“81(5B) The auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the Explanation given to him by the society, the said accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society:

Provided that, where the auditor has come to a conclusion in his audit report that any person, is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report. The auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The auditor, who fails to file First Information Report, shall be liable for disqualification and his name shall be liable to be removed from the panel of auditors and he shall also be liable to any other action as the Registrar may think fit:

Provided further that, when it is brought to the notice of the Registrar that, the auditor has failed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorised by him in that behalf:

Provided also that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar alongwith

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

his audit report. Failure to file such Special Report, would amount to negligence in the duties of the auditor and he shall be liable for disqualification for appointment as an auditor or any other action, as the Registrar may think fit.”

(emphasis supplied)

11. Under Section 81(5B), the auditor is under an obligation to submit an audit memorandum duly signed by them to the society and to the Registrar on the accounts examined by them and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited. The auditor has to state whether in their opinion the accounts give all the information by or under the 1960 Act and present a true and fair view of the financial transactions of the society. In terms of the first proviso to Section 81(5B), when the auditor has come to the conclusion in the audit report that any person is guilty of any offence relating to the accounts or any other offences, they are obligated to file a specific report to the Registrar. The auditor is then required, after obtaining the written permission of the Registrar, to file an FIR. The second proviso stipulates that when it is brought to the notice of the Registrar that the auditor has failed to initiate action as specified in the first proviso, the Registrar shall cause an FIR to be filed by a person authorized by them in that behalf. In terms of the third proviso, if the Registrar finds apparent instances of financial irregularities resulting into losses to the society at the behest of a member of the committee or officers or by any other person, he has to prepare a special report and submit it to the Registrar together with his audit report.
12. As already noted, in the present case, several FIRs have been lodged in respect of the affairs of the bank. This included three FIRs dated 11 and 12 August 2021, FIR Nos 525, 526 and 527 of 202, which were lodged by the auditor. These FIRs were lodged soon after the audit report dated 6 August 2021. At this stage, it would be material to note that the FIR which was lodged by the appellant was on 19 July 2019, prior to the date of the audit report. The narrow issue which falls for consideration in the present appeal is whether the provisions of Section 81(5B) can be construed as preventing a share holder of the society such as the appellant, who was also an erstwhile director, from independently setting the criminal law in motion.

SUPREME COURT REPORT: DIGITAL

13. The respondents have submitted that the institution of the FIR by the appellant, which is based on the audit report, is in contravention of Section 81(5B). It is contended that only the auditor or the Registrar is empowered to file an FIR in terms of Section 81(5B). The substance of the respondents' argument is that the procedure laid down under Section 81(5B) is a special procedure, and will prevail over Section 154 of the CrPC. To fortify their submission, the respondents have relied on the decisions of this Court in **Jeewan Kumar Raut v. CBI**⁵ and **Jamiruddin Ansari v. CBI**.⁶
14. The High Court was of the view that since the provisions of the 1960 Act are special in the sense that they govern co-operative societies in the state, the provisions of Section 81(5B) would preclude the registration of an FIR at the behest of a person, such as the appellant, who is a shareholder of the co-operative society. We are unable to accept the view of the High Court. Neither expressly nor by necessary implication does the 1960 Act preclude the setting into motion of the criminal law by any person other than the auditor or the Registrar.
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.⁷ 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.

5 (2009) 7 SCC 526

6 (2009) 6 SCC 316

7 See *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299; *Directorate of Enforcement v. Deepak Mahajan*, (1994) 3 SCC 440

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

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**,⁸ 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.⁹
18. In **Lalita Kumari v. Government of U P**,¹⁰ 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

8 (1982) 3 SCC 516

9 T T Antony v. State of Kerala, (2001) 6 SCC 181

10 (2014) 2 SCC 1

SUPREME COURT REPORT: DIGITAL

and punish the guilty. The criminal proceedings are initiated in the interests of the public to apprehend and punish the guilty.¹¹ 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.¹²

19. In **A R Antulay v. Ramdas Srinivas Nayak**,¹³ 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

11 Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288

12 Ratanlal v. Prahlad Jat, (2017) 9 SCC 340

13 (1984) 2 SCC 500

DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH BASI AND OTHERS

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 co-operative 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 co-operative 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, 1999¹⁴ 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;

SUPREME COURT REPORT: DIGITAL

(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**,¹⁵ this Court interpreted the purport of Section 20-A(2) of the Terrorist

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

and Disruptive Activities (Prevention) Act, 1987,¹⁶ 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, 1994¹⁷ 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

16 “TADA”

17 “TOHO Act”

SUPREME COURT REPORT: DIGITAL

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.¹⁸ 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.

**DHANRAJ N ASAWANI v. AMARJEETSINGH MOHINDERSINGH
BASI AND OTHERS**

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**¹⁹ 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.

SUPREME COURT REPORT: DIGITAL

30. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 16 November 2021 by which the FIR which was lodged by the appellant, namely, FIR No 806 of 2019 dated 19 July 2019 has been quashed.
31. We, however, clarify that the proceedings which have been instituted before the Bombay High Court to challenge the order of the Minister shall not be affected by the present order.
32. The appeal is allowed in the above terms.
33. The applications for intervention/impleadment are allowed.
34. Pending applications, if any, stand disposed of.

Special Leave Petition (Criminal) No 2246 of 2022

35. The Special Leave Petition is disposed of in terms of the order passed by this Court in Dhanraj ***N Asawani vs Amarjeet Singh Mohindersingh Basi and Others*** [Criminal Appeal No 2093 of 2023].

Headnotes prepared by: Ankit Gyan

Result of the case : Appeal allowed
and SLP disposed of.