

## CO-OPERATIVE HOUSING SOCIETIES

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### (1) Direct FIR against the Co-operative Society can be done as per IPC held Hon'ble Supreme Court:

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION Criminal Appeal No 2093 of 2023 (Arising out of SLP (Crl) No 1715 of 2022) Dhanraj N Asawani Appellant Versus Amarjeetsingh Mohindersingh Basi and Others Respondents, the Hon'ble Supreme court in para No. 27 of the judgment " held that 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 16 Crl.A. 2093/2023 express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC."

The brief fact of the case is :

1. 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 Code at Police Station Pimpri, Chinchwad.
2. 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 1960 . The second respondent is the former Chairperson of the bank. Several complaints were lodged by individuals, members, shareholders, 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 Wing 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.
3. The High Court was moved by the first and second respondents in a writ petition under Article 226 of the Constitution for quashing the 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 1973 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.
4. Para 20 of the order states " The 1960 Act is a special law enacted to govern co-operative societies in Maharashtra. Section 81 of the 1960 Act casts a public duty on the auditor and the Registrar to audit co-operative societies. In pursuance of this objective, Section 81(5B) obligates them to register an FIR in case they discover any financial irregularities in the audit reports of a 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."
5. Para 24 states " 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."

6. Para 29 states“ 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.”