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(This order is modified and uploaded vide speaking to the minutes order dated 07.09.2026)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3733 OF 2024

1. Madolayya Sagayya Mathapati
2. Dagadu s/o Baliram Girbane
3. Ramesh s/o Dadarao Bagdure
4. Rajesh Vishwanathappa Valande
5. Matin Nabisab Alandkar
6. Kishanrao Veerappa Bhingole (Reddy)
7. Shivajirao s/o Manikrao Jadhav .. Applicants

versus

The State of Maharashtra & another .. Respondents

WITH
CRIMINAL APPLICATION NO. 3735 OF 2024

1. Rajesh Vishwanathappa Valande
2. Madolayya Sagayya Mathapati
3. Dagadu s/o Baliram Girbane
4. Ramesh s/o Dadarao Bagdure
5. Matin Nabisab Alandkar

6. Kishanrao Veerappa Bhingole (Reddy)

7. Shivajirao s/o Manikrao Jadhav .. Applicants

versus

The State of Maharashtra & another .. Respondents

Mr. N. P. Patil Jamalpurkar, Advocate for the Applicants.

Mr. N. R. Dayama, APP for the State.

Mr. S. B. Gastgar, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 27.08.2026

PRONOUNCED ON : 04.09.2026

ORDER :

1. Both these applications involve similar set of facts so also being arising out of the properties of one trust, by consent of both sides, heard and finally decided together.

2. In Criminal Application No. 3733/2024, the Applicants are seeking quashment of First Information Report No. 278/2023 registered with Aurad Shahajani Police Station, District Latur, on 12.12.2023 for the offences punishable under Sections 406, 409, 420, 468, 472, 120B r/w 34 of Indian Penal Code.

3. First Information Report lodged by Sundarlal Ramnivas Darak alleges against the then and present trustees of Shardopasak Shikshan Sanstha, a Trust, for not protecting the interest of the trust in respect of the property at Survey No. 106 by selling/allotting the said land by effecting plotting therein to the employees of the trust for Rs. 6,000/- only. There is allegation that in respect of the said transaction, mis-appropriation has been committed. It is alleged that without seeking prior permission/sanction of Charity Commissioner, 40 plots were sold by executing sale-deeds in January 1997. It is further alleged that though the said plots were allotted/sold to the employees of the trust for the reason that they had no arrangement of residence at that place, however, number of employees sold the said plots to third party without seeking permission of the trust. It is also alleged that the original layout of the plot was for 40 plots and plot No. 32 is green belt. There is allegation that by preparing bogus layout, 4 plots i.e. plot Nos. 42 to 45 were created and the same were sold. The sale-deeds in respect of all plots were executed in the year 1997 and 2003. *Post facto* permission/sanction was sought from the Charity Commissioner which came to be granted by order dated 21.12.2020 passed in CC No. 31/2019. However, it was partial *post facto* sanction granted only for the reason that in case permanent

structures are constructed on the said plots, there would be loss to the purchasers. It was directed to the trustees to recover the other plots wherein there is no permanent construction done. It is claimed that this order has become final now.

4. In Criminal Application No. 3735/24, first informant Sundarlal lodged report in respect of mis-appropriation of property at Survey No. 192 which came to be purchased by the trust on 13.04.1998 from Pandurang Patil vide registered sale-deed No. 726. The said land admeasuring 14 R was sold in the year 2013 without seeking sanction of the Charity Commissioner. There is allegation that out of the said land, 10030 sq. ft. land was sold by sale-deed No. 3170/2013 to Chungud Santan Thakur for Rs. 7,00,000/- though its market value is Rs. 8,40,000/-. Similarly, remaining 5100 sq. ft. land was sold to same person vide registered sale-deed No. 3233/2013 on 04.10.2023 for Rs. 3,00,000/-. It is alleged that in respect of both the transactions, trust has not received consideration since it is mentioned therein that the amount of consideration was already received in cash. Thus, there is allegation with regard to the mis-appropriation of trust property. It is also claimed that the said transaction came to be effected in the year 2013 however, mutation

in respect of the same was not taken until 2020 in order to ensure that the transaction is not made known to others. This Criminal Application came to be filed challenging order passed by the learned Magistrate under Section 156(3) of Code of Criminal Procedure and registration of offence vide Crime No. 277/2023.

5. Learned Counsel for Applicants submits that in Criminal Application No. 3733/2024, First Information Report came to be lodged in the year 2023 by making grievance in respect of the resolution passed by the trustees in the year 1992. It is claimed that in fact, the fathers of Sundarlal Darak as well as the intervenor Ravindra Gastagar were trustees of the said trust and were party to the resolutions in question. It is contended that after their death, their heirs with malafide intention have lodged complaint against the present trustees in order to cause harassment to them. It is contended that as far as resolution of the year 1992 is concerned, except for Applicant No. 6 – Kishanrao Veerappa Bhingole (Reddy), no other Applicant was signatory or party to the said resolution. It is claimed that in any case, execution of sale-deed has not been done by present Applicants and as such they are not responsible for the said transaction. It is claimed that Applicant Nos. 1 and 2 are the

employees in the trust, who purchased the plots and hence they cannot be held responsible for alleged mis-appropriation of the property of the trust or for not obtaining previous sanction before effecting sale of the trust property. He further argued that witnesses of the sale-deeds cannot be made as accused as they don't carry any responsibility of contents of the documents. It is claimed that some of the Applicants became trustees in the year 2011 and as such they had no concern with the previous transfers of plots allegedly effected in the years 1992 and 2003. He further argued that the present intervenor had moved proceeding under Section 41D of Maharashtra Public Trust Act against the trustees making allegations against them with regard to the mis-appropriation of the trust property and fund. By order dated 03.11.2021 passed by the Joint Charity Commissioner, it is held that there is no mis-appropriation committed by the trustees nor any pecuniary benefits were drawn by them. This order came to be confirmed by the Division Bench of this Court in Writ Petition No. 488/2019 vide order dated 09.02.2023. As far as Criminal Application No. 3733/2024 is concerned, it is his submission that the learned Magistrate has passed order without application of mind to the facts and in casual manner and to buttress

this submission, he took this Court through the order passed under Section 156(3) of Code of Criminal Procedure.

6. To support these submissions reliance is placed on following judgments :-

- (i) Priyanka Shrivastava and another vs. State of Uttar Pradesh and others, (2015) 6 SCC 287
- (ii) Basavraj s/o Vishwanathappa Valande vs. The State of Maharashtra, Criminal Application No. 3901/2024
- (iii) Narayan Kalba Gaikwad and another vs. The State of Maharashtra and another, Criminal Application No. 3895/2017

7. Learned APP and learned Counsel for the informant/intervenor opposed the Applications by submitting that even if it is accepted for the sake of arguments that some of the Applicants were not trustees at the relevant time of passing of the resolution, they are beneficiaries of the agreements. It is contended that in any case, Applicant No. 6 Kishanrao Veerappa Bhingole (Reddy), was trustee at the relevant time so also at present he is the trustee and as such proceeding cannot be quashed against him. In this regard, it is their further submission that Applicant Nos. 1 and 2 are the beneficiaries of the said transaction being teachers and as such they are rightly arraigned as accused herein. In this regard reference is made to the

report of the Extension Officer indicating that the sale of Plot Nos. 42 to 45 is illegal and, without there being any sanction of layout to that effect. Reference is made to order dated 05.12.2023, passed by the Judicial Magistrate First Class, indicating that Applicant Nos. 1 and 2 were witnesses in respect of sale of these plots i.e. plot Nos. 42 to 45. Learned Counsel for the informant/intervenor submits that already criminal revision has been filed before the Sessions Court against the order dated 05.12.2023 and for the purpose of quashment of First Information Report, instant Petitions are filed which, according to them, are not maintainable. It is their submission that resolutions in the year 1992 were tampered in the year 2020 while obtaining *post facto* sanction for the sale and which has been observed by the Charity Commissioner in order dated 21.12.2020. It is submitted that having regard to these facts, it is not open for this Court to quash First Information Report No.278/2023.

8. Reference is made to following case law to buttress above submissions :-

- (i) A. R. Antulay vs Ramdas Srinivas Nayak and another
(1984) 2 Supreme Court Cases 500
- (ii) Suresh Bhagwanrao Puri and another vs. State of

Maharashtra and others, 2017(2) Mh.L.J. (Cri.) 281

- (iii) Kathyayini vs. Sidharth P. S. Reddy and others
2025 SCC OnLine SC 1428

9. Insofar as contention of the contesting Respondents about maintainability of present Applications on the ground of pendency of the Revision Applications before Sessions Courts is concerned, there is no embargo for Applicants to invoke provisions of Section 482 of Code of Criminal Procedure. Needless to say that in view of the order passed in the present Applications, consequences shall follow. Suffice it to say that this Court finds no justification for not entertaining the Applications.

10. At the first blush, it may appear that the complainant and intervenor only after death of their father invoked the provisions of criminal law in order to harass the Applicants. It is however pertinent to note that apart from the fact that it is contention of complainant that he came to know about the crime after going through the documents, there are observations made by learned Charity Commissioner in order dated 21.12.2020 in CC 31/2019. The relevant portion of the said order is reproduced as herein below :-

“19. The above facts further finds support from one another circumstance, two affidavits were filed prior to lockdown in this case, which are below list Exh. 24A at Page Nos. 52 & 55. The affidavit is one of Mr. Ramniwas Balkisan Darak and another of Mr. Basavrajappa Vajjnathappa Gastagar. Both the affidavits are to the effect that the bold portion of resolution No. 4 referred above was not the resolution passed in the meeting dt. 16-6-1992. The names of the above two deponents do appear in the copy of resolution produced by the applicant as the signatures at Sr.No. 2 and Sr.No. 4. Their signatures in the resolution can be compared prima facie under section 73 of the Evidence Act from the affidavits filed by them. An argument was made by Ld. Counsel Shri Gunale that these deponents expired during the lockdown, therefore, they are not available for cross-examination, therefore, their affidavits cannot be read as evidence. Though the submission is lucrative at the first blush. But, the Ld. Adv. for objector submitted that the second deponent Shri Gastagar expired on 4 August 2020 and the first deponent expired on 25-10-2020. Such a statement of dead person is relevant under section 32 Clause 7 and clause 8 of the Evidence Act. It cannot be disputed that they are no more available for cross-examination. But, overall circumstances and the relevancy of the above deponents affidavits under clause 8 of Section 32 of the Evidence Act, cannot be disputed with. Even if, not accepted, as is deposed, but the circumstance that they did make such affidavits supports

the objector. Even otherwise. if the above affidavits are not considered, yet the resolution in itself considered with the documents at page No. 40 and 41 in respect of meeting allocating plots on 29-04-1992 prior to the resolution itself makes the resolution vulnerable, and gives a straight conclusion that the resolution is nothing but a tampered document to be an eye wash in an attempt to show that the resolution was infact passed on 16-06-1992. It is further important to mention that the notice mentioning the agenda for the meeting dt. 16-6-1992 on which date the alleged resolution was passed as by the applicant, is not produced on record. Therefore adverse inference needs to be drawn on this point that the notice infact did not contain such an agenda. Otherwise, that would have been surely filed on record after the objection was raised, initially by five persons in proceeding under section 41D and thereafter, at the time of filing of the present application. From the above facts, I hold that the resolution is nothing but a tampered version as is contended by the objector.

20. Now, if the resolution itself is tampered and if the original version of the resolution is itself considered without the bold portion, which is nothing but an interpolation and tampering by way of insertion and scoring of two words to match with the original version, Then there was no resolution to sell of 40 plots, infact passed by the trustees as is tried to be shown. In absence

of such resolution, neither the clause (a), (b), (c), (f) of Section 36 (5) be said to be meted out in the present case. Even otherwise, if there was an emergent situation, there must be some documents produced on record to show that on or prior to 16-6-1992, the rooms of Sharda Sadan were dilapidated, so much, so that, it was an emergent need to construct it. No such document is forthcoming. There is no estimate produced on record on or prior to 16-6-1992 showing that what was the estimate required for such construction, what would be the nature of such construction, what was the compelling necessity for such construction, what was the strength of the students and classes for which without those rooms, being constructed it was not possible to run the school. No application from the staff demanding land of the trust contending that they were having no houses is available on record, which is one of the grounds in the present application. The contention that no staff was ready to work and they were facing difficulty for residential houses, which was affecting the running of the school, and therefore, such decision was made. This contention is nothing but a smoke screen. Because, the institution is from 1972, the school was already running since 1972 up to 1992, the staff was working, which cannot be possible for some or another accommodation for the staff. Moreover, it is for the staff seeking a job to make arrangement for his residence. It was not the obligation on the trust to say that it was compelling necessity of the trust. Furthermore, some of the

staff to whom the plots were allotted out of 39 residences or lands in er their 13 persons were having own names or in their family members, as can be seen from the documents filed below list Exh. 18 which are assessments, issued by the Gram Panchayat, Aurad Shahajani. This falsifies the contention that the trust was under compelling circumstances to fulfil the need of the staff.”

In operative part of the order in Clause (iv) it is held thus :-

“The above permission in clause (i) and (ii) above, shall be subject to that condition, the trustees who are signatories of the alleged resolution dt. 16-06-1992 except the deceased, reimburse from their own funds, 2 Acres of land to the trust, within a period of two months from the date of order, as requested in Exh. 26.”

11. Above observations indicate that the allegation is not only in respect of sale of subject property by passing resolutions in question and contrary to the provisions of Maharashtra Public Trust Act, however, there is also allegation that there has been tampering done with the said resolution. Apart from this, there are observations made in respect of plot Nos. 42 to 45 and it is recorded about there being no sanction for creation of these plots.

12. No doubt, the Joint Charity Commissioner in Applications under Section 41D of the Act bearing No. 87/2017 and 186/2018 filed by the complainant and intervenor passed order dated 03.11.2021 wherein it is held that there is no mis-appropriation of the funds of the trust nor any pecuniary benefits are drawn by the trustees. The relevant observations in the said order read thus :-

32. It is admitted that the respondents have purchased the property in Survey No. 106 from one Shivkumar Mandage family by virtue of sale-deed dated 18.09.1990 copy of which is at Exh. 09 and thereafter converted the land for non-agricultural purposes. It is also admitted that by making plots for residential purposes, these plots were allotted by a lottery system to the teaching and non-teaching staff working in the educational institutions of the Trust. The said fact is admitted by AW-1 Mallikarjun Shankad (Exh. 79) in his cross-examination. It is true that it is not the responsibility of the employer to provide residence to their employees. However, as per the demand of staff members, the respondents made plots in Survey No. 106 and distributed the same to the staff members and as such the registered sale-deeds were executed in favour of teaching and non-teaching staff, the certified copies which are filed at Exh. 11 to 13, 104 and 105. On perusal of the said sale-deeds, it seems that the said plots were sold by respondent No. 1 on behalf of the Trust being president and not showing himself as his personal plots. Hence, the argument of the applicants that respondent No. 1

sold out these plots by posing himself as his personal property, does not hold substance. This fact is raised in Application No. CC/31/2019 before Hon'ble Charity Commissioner. No misappropriation of said Trust property seen on the face of record as the said property is utilized for the welfare of staff working in the units run by the Trust as observed by the Hon'ble Charity Commissioner, Mumbai as there is no evidence to show that the trustees have derived any pecuniary or other benefits.

33. So far as the Trust property bearing Survey No. 106 adm. 2 Acre 30 Guntha is a concern, as stated earlier, the respondents got ex-post-facto permission from Hon'ble Charity Commissioner regarding said sell transaction by order dated 21.12.2020 in Application No. CC/31/2019. In the said judgment, the Hon'ble Charity Commissioner held that the trustees I.e present respondents have not derived any pecuniary or other benefits from the sale transaction of Trust property bearing Survey No. 106. In the deposition of all the witnesses examined by the applicants stated that the respondents have misappropriated the Trust property bearing Survey no. 106 by selling it without prior permission of this Authority. the respondents got ex-post-facto permission for said sell transaction. Therefore, it cannot be said that while selling out the said property in Survey no. 106, the respondents/trustees have got personal benefit or illegal gain for their own profits. In this regard the applicants examined AW 4 Shivkumar Mandage is at Exh. 84 of application No.

87/2017 who clearly admitted in his cross-examination that he sold the property in Survey No. 106 to the Trust, he came to know about the present matter by reading news in the newspaper and nothing more is known to him about the said property after sold out by him. Hence, the allegations regarding the Trust property bearing Survey No. 106 of village Aurad Shahajani cannot be considered.

13. Thus, this order passed by the Charity Commissioner indicates otherwise than the order passed by Charity Commissioner in CC No. 31/2019. This Court, therefore, is unable to give any special weightage to any of these orders. Suffice it to say that observations in the order dated 21.12.2020 and more particularly operative part clause (iv) attributes offence/illegality against signatories to the resolution. Therefore, in Criminal Application No. 3733/2024, except for Applicant No. 6 rest of the Applicants not being Otrustees and signatories to the resolution at the relevant time, cannot be held responsible for the said resolution and consequent action thereupon.

14. Insofar as the allegations with regard to sale of Survey No. 192 admeasuring 14 R in Criminal Application No. 3735/2024 is concerned, in the resolution passed in 2013, Applicant Nos. 4, 6 and 7 were parties/signatories. In respect of sale of the said land,

application for *post facto* sanction is rejected by the Charity Commissioner. Further, from the recitals of sale deeds in question, there is reason to believe that the consideration towards sale of said properties has not been accounted to trust. In the circumstances, the trustees who were party to resolution along with deceased trustees were responsible for the same. Thus, prima facie, offence is made out against the trustee who were alive and signatories to the said resolution.

15. As far as employees who are allotted plots are concerned, they cannot be considered to be party to the alleged collusion with the trustees as the Charity Commissioner has accepted the fact that the trustees have allotted said plots to the employees and wherever construction was carried out, those transactions are protected. It is open for trust to reclaim other plots wherein construction has not been carried out as held by Charity Commissioner.

16. The Applicants who are witnesses to the agreement are concerned, it is settled position of law as observed by the Hon'ble Supreme Court in the case of Hemkunwar Bai vs. Sumersingh and others, **Civil Appeal No. 8827/2011**, the witness is not responsible

for the contents of the document and in such circumstances, the criminal proceeding against the witnesses to the document also cannot proceed. With regard to the submissions on the order passed by learned Magistrate it needs to be appreciated that there is every possibility of over lapping of facts considering peculiarity thereof. More particularly, when the complaints/applications came to be decided together, such over lapping may occur. However, that does not mean that learned Magistrate has failed to apply judicial mind to the facts of the case. This Court, therefore, finds no justification to allow Applications on that ground.

17. In the facts of the case, even if the material on record is accepted to be correct, no offence is made out against the Applicants except for those who were trustees at the relevant time and were party to the resolutions in question. The case of these Applicants, therefore, is squarely covered by the principles laid down by Hon'ble Supreme Court in case of State of Haryana and others Vs. Bhajan Lal and others, **1992 SCC (SUPP) 1 335**.

18. In view of the above discussion, both Applications stand partly allowed. Criminal Application No. 3733/2024 stands allowed except

for Applicant No. 6 Kishanrao Veerappa Bhingole (Reddy). So also, Criminal Application No. 3735/2024 stands allowed except for the Applicant No. 4 – Ramesh Dadarao Bagdure, Applicant No. 6 – Kishanrao Veerappa Bhingoli (Reddy) and Applicant No. 7 – Shivajirao Manikrao Jadhav. **Criminal Application No. 3733/2024 stands allowed qua rest of the Applicants in terms of prayer clauses 'C' and 'C2' and Criminal Application No. 3735/2024 stands allowed qua rest of the Applicants in terms of prayer clauses 'C' and 'C1'.**

(R. M. JOSHI, J.)

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