

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.442 of 2015

Sopanrao s/o Vinayakrao Pawar. .. **Petitioner.**

Versus

The State of Maharashtra
And Another.

.. **Respondents.**

Shri. S.B. Talekar, Advocate, for petitioner.

Shri. S.A. Ambad, Additional Public Prosecutor, for
respondent No.1.

Shri. J.M. Murkute, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 16th JUNE 2015

ORDER:

1) The petition is filed to challenge the order made by the Additional Sessions Judge Gangakhed, District Parbhani in Criminal Revision No.33 of 2014 and also for relief of quashing and setting aside the order made on Exhibit 32 in RCC No.61/2012 by which the learned Judicial Magistrate, First Class, Gangakhed,

rejected the application filed by the present petitioner for discharge in the case. Relief of discharge is also claimed in the present proceeding. Both the sides are heard.

2) Private complaint was filed by respondent No.2 against the petitioner and his son for offences punishable under sections 191, 192, 420, 465, 466, 468, 471, 84 of the Indian Penal Code. In the complaint allegations are made that in village Pimpri-Zola, Tahsil Gangakhed there is one Trust by name "Shri. Sansthan Devi Anusaya Math" and the complainant is the follower of that Math. It is registered under the provisions of the Bombay Public Trusts Act. This Math has property in village Pimpri-Zola and at new Mondha, Gangakhed. This Math owns land admeasuring about 599 acres in the vicinity of villages Waghalgaon, Pimpri-Zola, Irlad. It is contended that the Trust owns huge movable property also which include agriculture implements, electric motors, flour mill, pipeline, tractor, jeep, cattle and horses also. It is the case of the complainant that to grab the property of the Trust a show was created by accused No.2 in a Gram Sabha and he declared that he was devoting his son, accused No.1 to

the aforesaid Math. The previous Guru of the Trust Shri. Yadavgir Guru Avadhutgir Maharaj had died on 28-3-1985 and Gram Sabha was held immediately i.e. on 29-3-1985. It is contended that some other resolutions were made with regard to property of the Math and it was decided that the property of the Math was not to be transferred in any way. It is contended that on the date of the so called devotion of the son by accused No.2, son of accused No.2 was not major and he was aged about hardly 16 years. It is contended that age of accused No.1 was dishonestly mentioned as 21 years and the record of affidavit was created to make accused No.1 trustee of the Math. It is contended that it was within knowledge of accused No.2 that accused No.1 was minor but such false record was created only to take control over the Trust property.

3) It is the case of the complainant that accused Nos.1 and 2 then took steps to see that their relatives are appointed as trustees. It is contended that after taking the Trust under control, accused Nos.1 and 2 started to grab the property of the Trust. It is contended that false advertisements were also published in the name of the

Trust to deceive public and collect money. Some instances of such advertisements are given and it is contended that when the Trust was not running school or college, advertisement was given that the Trust wanted to appoint employees on such educational institutions. It is contended that when there was no hospital or dispensary run by the Trust, amount was shown to be spent on staff like doctors and others. It is contended that by using this *modus operandi* amount of the Trust was misappropriated. It is contended that on the immovable property belonging to the Trust name of accused No.1 was entered in the revenue record of the Trust.

4) It is the case of the complainant that even when the Trust was making big income, accounts of the income were not properly maintained and audit reports were not prepared for many years and no information was given to the office of the Assistant Charity Commissioner.

5) Allegations are made by the complainant that when some portion of the land of the Trust was acquired by the Government for some projects, this amount was

collected by accused Nos.1 and 2 from Government and this amount was not credited in the accounts of the Trust. Particulars of this amount are given. It is contended that payment received in the name of one Pawar was received by accused No.2.

6) The aforesaid complaint was referred for investigation by the Judicial Magistrate under section 156(3) of the Code of Criminal Procedure. Police filed charge sheet for aforesaid offences against both the accused.

7) This Court has gone through the statements of various persons recorded by police. The statements show that the amount was collected from the Government in respect of acquisition of property and one Pawar had also collected money from the Government. There are statements of more than 15 persons recorded during investigation. The submission made shows that only when office of the Assistant Charity Commissioner intervened some amount was shown in the account of the Trust which was more than Rs. 60 lakh and this amount was shown as

collected hardly within one or two years. No accounts in respect of other years are available and the accused did not make the record available.

8) Learned counsel for the petitioner submitted that main allegations are against accused No.1 and the petitioner has nothing to do with the aforesaid so called activities. He submitted that on the date on which the amount was shown to be withdrawn from Government office in respect of acquisition, the accused No.2 was on duty in his school and such record is available. Thus he wants to take defence of *alibi*. Such defence cannot be considered at this stage. The record shows that the accounts were not maintained and the money of the Trust has been misappropriated. There are other allegations that false affidavit was made and the present petitioner has also misappropriated the money of the Trust. It can be said that the accused have taken control over the Trust. In view of the nature of allegations and the material on record it cannot be said that the allegations are false and there is no material for framing charge. Thus, it is not possible to discharge the petitioner.

9) It appears that the learned Additional Sessions Judge has held that the order of refusal to discharge is interlocutory order and revision is not tenable. On this point there is one judgment of this Court (Nagpur Bench) reported as **2002 Bom. C.R. (Cri) 241 (Vasant Laxman Ruikar v S.Y. Khaire)**. Thus the revision was tenable. There is material of aforesaid nature and it is not possible to give discharge to the petitioner from the case.

10) In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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