

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

CRIMINAL APPLICATION NO. 4791 OF 2014

Gulabrao S/o Ragho Bhamre (Patil) **...Applicant**

Versus

The State of Maharashtra and others **...Respondents**

.....
Shri. P. R. Patil, Advocate for the applicant
Shri. U. S. Mote, APP for respondent/State
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**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 10TH, 2015.**

PER COURT : -

1. Heard learned Counsel for the applicant and the learned APP for respondent/State.

2. The present applicant happens to be the complainant, who had filed Criminal Misc. Application No. 283 of 2014 before the Chief Judicial Magistrate at Dhule, alleging therein that the proposed accused persons had fabricated the proceedings of the Trust. The applicant happens to be the primary member of the Trust namely; Katwan Vibhag Vidhayak Samiti, Vitai, Tq. Sakri, Dist. Dhule. The said Trust is registered under the Bombay Public Trusts Act. According to the

complainant, the respondents i.e. more particularly original accused No. 6 and 9 along with other accused had filed forged and fabricated Change Report before the Assistant Charity Commissioner. They had also fabricated the proceeding book of the Trust and had filed the same. After it was brought to the notice of the Assistant Charity Commissioner that the documents are forged and fabricated, the original accused No. 6 (since deceased) had withdrawn the said Change Report. It was also contended in the said Misc. Application that, all the accused in connivance with each other had filed forged and fabricated proceedings. The applicant had prayed that, in view of this the learned Magistrate may issue process under Section 156(3) of Code of Criminal Procedure (Cr.P.C.). It was specifically contended that the complainant had given a report to City Police Station on 27th July, 2014 however, the police had not taken any cognizance. They had also approached the Superintendent of Police, Dhule on 20th February, 2014 by filing a report. The Superintendent of Police had also not taken cognizance and, therefore, the applicant was constrained to file a complaint before the Chief Judicial Magistrate on 24th March, 2014.

3. The learned Judicial Magistrate First Class had heard the learned Counsel representing the complainant. The learned

Court had formed an opinion that the alleged forged and fabricated documents were filed before the Assistant Charity Commissioner, who happens to be a Court as contemplated under Clause 3 of the Indian Evidence Act, 1872. In view of this, the learned Magistrate was of the opinion that it would be appropriate that the application / complaint is filed before the Assistant Charity Commissioner and that he should take appropriate action under Section 195 of the Code of Criminal Procedure. The learned Magistrate has considered the definition of Court and has opined that the Assistant Charity Commissioner is a Court within the purview of Maharashtra Public Trusts Act. Hence, according to learned Magistrate, it was for the Assistant Charity Commissioner to consider the allegations levelled in the complaint and take appropriate action in accordance with law and hence, the complaint was returned for presentation before the appropriate authority i.e. the Assistant Charity Commissioner, Dhule. Hence, this application.

4. Learned Counsel for the applicant has placed implicit reliance upon the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of **Iqbal Singh Marwah and another v. Meenakshi Marwah and another** reported in **AIR**.

2005 SC 2119(1). The Hon'ble Apex Court in para Nos. 25 and 26 has held as follows:

25. *In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii), Cr.P.C. would be attracted only when the offences enumerated in the said provisions have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.*

26. *This appeal has been preferred by the complainant against the judgment and order dated 6-2-1998 of the Madras High Court by which the criminal revision petition preferred by the second respondent Ramaraj was allowed and he was acquitted of the charges under Sections 467 and 471, IPC on the ground that in view of the bar created by Section 195(1)(b)(ii), Cr.P.C. the learned Magistrate could not have taken cognizance on the police report. According to the case of the prosecution, the sale deed had been forged earlier and thereafter the same was filed in the Civil Court. For the reasons already discussed the appeal is allowed and the judgment the High Court is set aside. The criminal revision petition filed by the second respondent shall be heard and decided by the High Court afresh and in accordance with law.*

5. Learned Counsel for the applicant submits that, the Hon'ble Apex Court had considered that the sale deed had been forged earlier and thereafter the same was filed in the Civil Court. In view of this, the appeal filed by the complainant was allowed. Learned Counsel further submits that the judgment of the Hon'ble Apex Court (cited supra) was placed for the kind perusal of the learned Magistrate, however, the same has not been considered. According to the learned Counsel, since the documents were forged earlier and then presented before the appropriate authority i.e. before the Assistant Charity Commissioner, it would be within the purview of the learned Magistrate to consider that the accused had rather committed an offence punishable under Section 467 and 471 of the IPC. Learned Counsel further submits that, several citations were placed before the learned JMFC however, they have not been considered. Instead, the learned Magistrate was considering as to whether the complaint should be filed before the Assistant Charity Commissioner or before the JMFC.

6. In any case, the complainant was seeking directions under Section 156(3) of Code of Criminal Procedure and had not requested learned JMFC to take cognizance of the said offences.

In view of this, the order dated 25th March, 2014 passed by learned JMFC, Court No. 18, Dhule, deserves to be quashed and set aside and is accordingly set aside.

7. The matter is remanded back to the concerned Court of JMFC for reconsidering the complaint in view of the judgment of the Hon'ble Supreme Court in the case of Iqbal Singh (cited supra). The learned Magistrate shall appreciate the facts of this case in consonance with the law laid down by the Hon'ble Apex Court in the case of Iqbal Singh (cited supra) and the other judgments relied upon by the complainant. The learned Magistrate is requested to make an endeavour to pass appropriate order on the said complaint within a period of four weeks from the date of this order. Application stands disposed accordingly with no order as to costs.

(SMT. SADHANA S. JADHAV, J.)